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No.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1993

MEREDITH FREEDMAN and
THOMAS HENNESSY et al.,

Petitioners,

vs.

BOARD OF EDUCATION OF THE BOROUGH OF
PARK RIDGE, BERGEN COUNTY, et al.,

Respondents.

PETITION FOR A WRIT OF CERTIORARI
TO THE SUPERIOR COURT OF NEW JERSEY,
APPELLATE DIVISION

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Is denying a student participation in a school's graduation ceremony—when the student's presence does not pose a disruption to the ceremony—a violation of the Fourteenth Amendment to the United States Constitution?

2. Can a school deny a student participation in the graduation ceremony without procedural due process ?

3. Can a school discipline a student for consuming alcohol prior to arriving at a school function when such action is in violation of state statute?

LIST OF PARTIES

R.F., individually and by her parents R. and M.F.; R.F. and M.F.; L.H., individually and by her parents T. and C.H., T.H. and C.H., Petitioners. Board of Education of the Borough of Park Ridge, Bergen County, Neil Giovannielli, Louise Ruhle, George Apfel, Kathleen Coleman, George Gretsas, Gerald Hoffman, James Violante, Emile Binotto, Catherine Mozak and the New Jersey State Board of Education, Respondents.

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Petitioners R.F. and L.H. et al., respectfully pray that a Writ of Certiorari issue to review the judgment of the Superior Court of New Jersey, Appellate Division entered in the above-entitled proceeding on November 22, 1993.

OPINIONS BELOW

The unpublished order of The Supreme Court of New Jersey is reprinted in the appendix to this petition, p. 1a. The unpublished orders of the Superior Court of New Jersey, Appellate Division are reprinted in the appendix to this petition, pp. 2a-5a. The unpublished decision of the New Jersey State Board of Education is reprinted in the appendix to this petition, p. 6a. The unpublished decision of the New Jersey Commissioner of Education is reprinted in the appendix to this petition, p. 8a. The unpublished initial decision of the Office of Administrative Law is reprinted in the appendix to this petition, p. 12a. The unpublished decision (emergent relief) of the Commissioner of Education is reprinted in the appendix to this petition, p. 21a. The unpublished oral decision (emergent relief) of the Office of Administrative Law is reprinted in the appendix to this petition, p. 23a. The unpublished order of transfer (emergent relief) of the Superior Court of New Jersey, Chancery Division is reprinted in the appendix to this petition, p. 26a.

JURISDICTION

The Superior Court of New Jersey, Appellate Division's order granting Respondents summary disposition was issued on November 22, 1993 and is set forth in the appendix, pp. 2a-5a. This Court's jurisdiction is invoked under 28 U.S.C. § 1257 (a).

CONSTITUTIONAL PROVISIONS AND STATUTES

(a) Amendment VIII to the United States Constitution

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

(b) Amendment XIV to the United States Constitution

All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

(c) N.J.S.A. 18A:40A-10

Each school district shall develop a clear written policy statement which outlines the district's program to combat substance abuse and which provides for the identification, evaluation, referral for treatment and discipline of pupils who are substance abusers.

(d) N.J.S.A. 18A:40A-11

Each board of education shall adopt and implement, in accordance with rules and regulations promulgated by the State Board, policies and procedures for the evaluation, referral for treatment and discipline of pupils involved in incidents of possession or abuse of substances as defined in section 2 of this act, on school property or at school functions, or who show significant symptoms of the use of those substances on school property or at school functions.

(e) N.J.S.A. 18A:37-2

Conduct which shall constitute good cause for suspension or expulsion of a pupil guilty of such conduct shall include, but not be

limited to, any of the following:

* * *

j. Knowing possession or knowing consumption without legal authority of alcoholic beverages or controlled dangerous substances on school premises, or being under the influence of intoxicating liquor or controlled dangerous substances while on school premises.

(f) N.J.A.C. 6:29-6.3 (2.)

Specific procedures, sanctions and due process provisions for violations of the alcohol and other drug policy requiring disciplinary action by the district board of education. The sanctions should be graded according to the severity of the offense.

STATEMENT OF THE CASE

After admitting to Park Ridge High school principal Emil Binotto that they had a sip of champagne prior to arriving at the prom on June 5, 1992, the Petitioners were informed that they were in violation of the school's Substance Abuse Policy 5131.6 and the prom regulations and would be precluded from attending the Baccalaureate Ceremony, the senior breakfast and the graduation ceremony. This decision was upheld by superintendent Catherine Mozak. After appealing to the Park Ridge Board of Education, the Board upheld the principal's decision by finding that once having consumed any amount of alcohol, R.F. and L.H. were, by definition, in an "unsatisfactory condition."

Petitioners filed the original Complaint and Order to Show Cause with Temporary Restraints in the Superior Court, Chancery Division on June 17, 1992 against the Board of Education of the Borough of Park Ridge, the individual members, Emil Binotto and Catherine Mozak (Respondents). The Complaint claimed that the

discipline imposed would cause irreparable harm and was a violation of the Petitioners' due process rights. The judge found that the Commissioner of Education has fundamental jurisdiction over school matters and denied the application for preliminary restraints. Transferring the Complaint to the Commissioner of Education, he stated: "The prom rules should be redrawn before the next prom, it seems to me, and if the regulation is that you can't use alcohol on the way to the prom it should say so."

On June 18, 1992, the case was assigned to an administrative law judge who, in an initial decision denying the motion for emergent relief, held that although denial of participation in the graduation ceremony would cause irreparable harm, the school's Substance Abuse policy prohibits student use of alcohol on school property or at any school functions sponsored by the school. That same day, the Commissioner affirmed the initial decision. Because the decision was rendered late in the afternoon, it was too late to appeal the Commi ioner's decision and the graduation exercises proceeded without the participation of Petitioners.

The disposition of the motion for emergent relief did not dispose of the underlying petition. On October 2, 1992, a plenary hearing was held at the Office of Administrative Law. On October 2, 1992, the administrative law judge issued an initial decision in which Respondents were granted summary decision. The written decision, which was issued on October 22, 1992 found that the discipline imposed was reasonable and rejected Petitioners' attempt to distinguish between written rules "warning" students about drinking prior to the prom and "prohibiting" them from drinking prior to the prom. The court stated: "A warning is sufficient."

On November 30, 1992, the Commissioner adopted the initial decision of the administrative law judge, finding that Respondents'

policy warned of sanctions for students consuming alcohol before, during or after the prom.

On December 30, 1992, Petitioners appealed the Commissioner's decision to the New Jersey State Board of Education, claiming the discipline imposed was without authority, was unduly harsh and was a violation of Petitioners' due process rights. On May 5, 1993, the New Jersey State Board of Education issued its decision affirming the Commissioner's decision by finding that the discipline imposed was reasonable and that the prom policy was clearly communicated. However, the State Board urged Respondents to review their written policy "to reduce the possibility of misunderstanding in the future."

Pursuant to the State Board's directive, Respondents revised the prom regulations. However, the revised regulations preclude students who consume alcohol at pre-prom parties or en route to the prom from attending the graduation ceremony. The decision of the State Board of Education did not address Petitioners' claim that the Respondents were without statutory authority to discipline Petitioners.

The State Board's decision was opposed by Board member John T. Klagholz who urged the State Board to reverse the Commissioner of Education. Mr. Klagholz insisted that the school had no authority to discipline Petitioners since there was no evidence whatsoever that they were in possession of alcohol or in an "unsatisfactory condition."

On June 21, 1993, Petitioners appealed the decision of the New Jersey State Board of Education to the Superior Court of New Jersey, Appellate Division. On November 22, 1993, the Appellate Division affirmed the decision of the State Board of Education by

issuing an order granting Respondents summary disposition.

On December 22, 1993, Petitioners filed their petition for certification with the Supreme Court of New Jersey. On February 22, 1994, the Supreme Court of New Jersey issued an order denying the petition for certification.

REASONS FOR GRANTING THE WRIT

Certiorari should be granted for two reasons: This petition presents an issue resolved by implication by this Court but not specifically and unequivocally decided by this Court; and the order of the Superior Court of New Jersey, Appellate Division, conflicts, by implication, with previous decisions of this Court, State Supreme Courts and a Court of Appeals.

In denying Petitioners the right to participate in their graduation ceremony because they had one sip of champagne before the Park Ridge prom, the New Jersey State Board of Education and the Superior Court of New Jersey, Appellate Division found that Respondents acted reasonably and in accordance with due process. However, this decision is in conflict with Respondent's own Substance Abuse Policy and the New Jersey Administrative Code. It also conflicts with decisions of several other tribunals, including this Court, which have found that rules must be reasonable and that, in accordance with the Fourteenth Amendment to the Constitution, all mitigating factors must be considered when administering severe punishments.

I

The discipline imposed by Respondents was unduly harsh, arbitrary and unreasonable and failed to consider any of the mitigating circumstances.

Respondent's Board Policy 5131.6 (Substance Abuse) states:

> "The Board further believes that a combination of an educational and corrective approach to the problem of substance abuse is more effective than one which is solely punitive."

The Commissioner of Education of New Jersey has held that "The use of marks and grades as deterrents or as punishment is usually ineffective in producing the desired results and is educationally not defensible." Petitioners assert that it is equally unfair to deny a student participation in the graduation ceremony as a punishment since it is an educationally unsound practice and other appropriate measures are available.

N.J.A.C. 6:29-6.3 (c)2. states that sanctions for violations of a school's alcohol and drug policy should be graded *according to the severity of the offense.* (emphasis added)

In *Valentine v. Independent School Dist.*, (Iowa. 1921) 183 N.W. 434, the Supreme Court of Iowa stated that the school board had not adopted a formal rule to withhold graduation rights and honors from the students who would not wear caps and gowns and held that even if there were such a rule: "...we hold that such rule is unreasonable and a nullity as a condition precedent to receive the honors of graduation and a diploma." 183 N.W. at 436.

The court further stated that:

> "The enforcement of such a rule is purely arbitrary and especially so when the offending pupil has been passed for graduation after the performance on her part of all prescribed educational requirements." *Id.*

In *Ladson v. Board of Ed., Union Free Sch. Dist. #9*, 323 N.Y.S.2d 545, the Court held that inherent powers of school officials must relate to standards of reasonable relationship. In overruling a school's decision to suspend a student from participating in the graduation ceremony the Court stated:

"Respondents submit that the school officials have inherent powers to discipline by excluding persons from graduation ceremonies. This would obviously be so if a threat to disruption of the ceremony were presented. If there were sufficient good reason to suppose that the presence at the ceremony of a particular student would cause an upset or disruption of the ceremony, exclusion might be an appropriate regulatory act by the Board of Education." 323 N.Y.S.2d at 549.

Since the records of Petitioners prior to graduation were exemplary, prohibiting them from attending the graduation ceremony was inappropriate.

In conflict with the Superior Court of New Jersey, Appellate Division, the Supreme Court of Iowa has held that the main principle in considering the validity of a school rule is reasonableness *Bunger v. Iowa High School Athletic Association*, 197 N.W.2d 555, 564 (Iowa 1972). The court found that conduct outside of school hours and outside of school property may subject a pupil to school discipline only if the conduct has a direct and immediate effect upon the discipline and welfare of the school.

Petitioners looked and acted like all other students at the prom. In addition, there was not even a hint of alcohol on their breath. Were it not for the principal singling them out for questioning, they were indistinguishable from any other students. Furthermore, Petitioners' actions had no effect whatsoever upon the discipline and welfare of the school.

In *Clark County Board of Education v. Jones*, 625 S.W.2d 586, 588 (Ky. 1981), the Court of Appeals of Kentucky found that in disciplining students, administrators' actions are arbitrary if they do not consider: the previous general conduct of the students involved;

the academic standings of the students; the probability of a recurring violation; and the alternative punishment or restrictions.

This conflicts with the decision of the Superior Court of New Jersey, Appellate Division. In disciplining Petitioners because they had a sip of champagne before the prom, Respondents failed to consider the fact that neither of the students were previously disciplined by school administrators; that Petitioners had good/excellent academic records; that L.H., a member of the Honor Society, graduated one year early with nine college credits; that Petitioners were polite courteous and cooperative at the prom; that Petitioners had already missed the prom, the Baccalaureate Ceremony and the senior breakfast. Nor did Respondents consider alternative punishments or the fact that Petitioners' presence at the graduation ceremony would in no way cause a disruption or a threat to the health or safety of the other students.

The minimum procedural requirements necessary to satisfy due process depend upon the circumstances and the interests of the parties involved. As stated by Mr. Justice Frankfurter concurring in *Joint Anti-Fascist Refugee Committee v. McGrath*, 341 U.S. 123 (1951):

> "Whether the *ex parte* procedure to which the petitioners were subjected duly observed 'the rudiments of fair play', * * * cannot * * * be tested by mere generalities or sentiments abstractly appealing. The precise nature of the interest that has been adversely affected, the manner in which this was done, the reasons for doing it, the available alternatives to the procedure that was followed, the protection implicit in the office of the functionary whose conduct is challenged, *the balance of hurt complained of and good accomplished* (emphasis added) – these are some of the considerations that must enter into the judicial judgment." 341 U.S. at 163.

In a case similar to the instant case, the Supreme Court of Mississippi found that the punishment inflicted appeared to be unreasonable when considered along with other offenses set forth in the school's handbook. *Warren County Bd. of Educ. v. Wilkinson*, 500 So.2d 455, 461 (Miss. 1986) The Court even held that in denying a student all credit for the term for taking two sips of beer before attending the last day of school, the school board violated the Eighth Amendment to the Constitution prohibiting cruel and unusual punishment. *Warren, supra*, at 461.

This conflicts with the decision of the Superior Court of New Jersey, Appellate Division which did not consider the fact that the punishment inflicted on Petitioners was unreasonable when compared to the discipline set forth in the Substance Abuse policy for students who are intoxicated in school or are in possession of marijuana in school. Not only did the punishment far exceed the alleged "crime," it was illogical and cruel.

In *Betts v. Easley* (1946) 169 P.2d 831, a case in which injunctive relief was requested to prevent a deprivation of plaintiff's personal rights, the Supreme Court of Kansas stated:

> "The situation in which they [plaintiffs] find themselves must be reviewed realistically. Without such appraisal of facts and circumstances, courts would often have been unable, through the years, to safeguard the rights of individuals and minorities. Mere technical arguments, which disregard realities, speak with feeble force when basic freedoms are jeopardized." 169 P.2d at 839.

Students who violate football rules forfeit the right to play football. Students who violate the band, glee club or cheerleading rules likewise forfeit participation in those activities. There is no logical reason to deny a student participation in other activities for violat-

ing the rules of one activity. Therefore, denying a student participation in the graduation ceremony for allegedly violating the prom regulations makes no sense and is an arbitrary and unreasonable punishment since there is no rational basis for connecting the two activities. Furthermore, students who violate rules of any of the above activities are never precluded from attending graduation. This represents unfair treatment to the prom attendees.

The United States Supreme Court has found that individualized punishment by reference to all relevant facts and mitigating circumstances is fundamental to our criminal justice system. *Lockitt v. Ohio*, 438 U.S. 586 (1978).

The United States Supreme Court has professed that judges should exercise discretion in the exercise of punishment *North Carolina v. Pearce*, 395 U.S. 711 (1969). Specifically, the Supreme Court stated: "Prevalent modern philosophy of penology is that the punishment should fit the offender and not merely the crime." 395 U.S. at 723.

There have been numerous cases in New Jersey and throughout the country concerning students who have been involved in denial of participation in the graduation ceremony. It is understandable and desirable that in the interests of the school, students who pose a disruption to the ceremony or to the health or safety of the other students should not be allowed to participate.

However, a student only has one chance in his lifetime to participate in his graduation ceremony. Because he has spent thirteen years of his life working towards graduation, it is something in which he has a substantial interest. Denying a student participation in the graduation ceremony is unduly harsh and unforgiving. It causes irreparable harm and deprives the student and his family of

a precious memory forever. The psychological effects of such a grievous loss can be devastating. The student is dishonored, humiliated and socially alienated.

L.H., an extremely capable student, worked hard to graduate a year early so that she could stand beside her older sister at graduation. Instead, she sat in the stands with her family and watched her sister graduate.

R.F., a good student, looked forward to her grandmother flying up from Florida to attend her graduation. Instead, she sat in the stands and watched her friends graduate while her grandmother and mother sat at home.

The Appellate Division's order in the instant case is in conflict with *Valentine, supra* and *Bunger, supra* in which the Supreme Court of Iowa has stated that school rules must be reasonable. It also conflicts with the decision in *Warren, supra*, in which the Supreme Court of Mississippi found that leniency is desirable and that the punishment inflicted must be reasonable compared to other offenses. In *Betts, supra*, the Supreme Court of Kansas found that situations must be viewed realistically when basic freedoms are jeopardized. The decision also conflicts with *Clark County, supra*, in which the Court of Appeals of Kentucky found that administrators' actions are arbitrary if they do not consider the previous conduct of the students, their academic standings, the probability of a recurring violation and alternative punishments or restrictions. In *Lockitt, supra*, the United States Supreme Court found it fundamental that all relevant facts and mitigating circumstances be considered. And in *North Carolina, supra*, this Court held that the punishment "should fit the offender and not merely the crime."

In disciplining Petitioners, the Respondents gave no considera-

tion to R.F.'s and L.H.'s previous records, to any of the mitigating factors, to the reasonableness of the punishment or to alternative punishments. Thus, the order of the Superior Court of New Jersey, Appellate Division is in conflict with all of the above decisions.

Consideration of this matter by the United States Supreme Court would establish reasonable standards for the denial of participation in the graduation ceremony.

While it is true that Petitioners can no longer attend their graduation ceremony, they seek punitive and compensatory damages for Respondents' arbitrary and unreasonable actions. The Supreme Court of New Jersey erred when it denied the Petition for Certification. There have been at least fourteen similar cases in New Jersey in the past twenty years and it is likely there will be more. This matter has frequently been litigated in lower courts throughout the country. Because this controversy involves an issue of public interest that is capable of repetition, yet evading review, the Supreme Court of New Jersey should have considered the matter.

The order denying certification is in conflict with a similar case reviewed by the Supreme Court of Nebraska. In *Braesch v. DePasquale*, 256 N.W.2d 842, the Court would not dismiss a case involving high school athletes who had already graduated. The school officials appealed a trial court's order enjoining them from preventing high school basketball players who consumed alcohol during the season from interscholastic participation. In deciding to review the case, the court found that the question involved presented matters of public interest and stated:

"In the context of disciplinary action in the field of interscholastic athletic competition, almost no case could reach this court for

decision before it became moot if we refused to decide all cases where no actual controversy still exists between the parties at the time of appellate hearing and decision." *Braesch, supra*, at 845.

Like this situation, denial of graduation is usually announced within weeks of graduation, frequently leaving students little, if any time to appeal to higher courts. This puts the student at an unfair disadvantage.

The last time a case involving graduation reached a state Supreme Court, it seems, was in 1921 *(Valentine, supra)*, and even in that case, graduation had already occurred. The chances of an emergent application involving graduation ever reaching this Court before the graduation ceremony occurs is negligible.

Although Petitioners have graduated, the revised rules still deny participation in the graduation ceremony to any Park Ridge seniors who consume alcohol at a pre-prom party or en route to the prom. Since all these students have a substantial interest in attending the graduation ceremony, this rule represents a continuing controversy for the senior students.

II

Disciplining Petitioners with unclear prom regulations, denying the students a drug/alcohol test, never specifying which rules were violated, charging the students with consuming alcohol prior to arriving at the prom and then later converting that charge to arriving in an "unsatisfactory condition" without previously defining that term, are all a violation of Petitioners' due process rights.

Whenever a governmental body acts to injure an individual, the Constitution requires that the the act be consonant with due process of law. *Dixon v. Alabama State Board of Education*, 294 F.2d 150 (5th Cir. 1961); *Knight v. State Board of Education*, 200 F. Supp. 174 (M.D. Tenn. 1961): *Kelley v. Metropolitan County Bd. of Ed. of Nashville, etc.*, 293 F. Supp. 485 (1968).

While some courts may claim that graduation is a "mere privilege" and others that it is a right, the United States Supreme Court has found that individuals may not be deprived of privileges and property without due process. *Cafeteria & Restaurant Workers Union, Local 473, AFL-CIO v. McElroy*, 367 U.S. 886 (1961).

School regulations must sufficiently define prohibited conduct as to give adequate notice to students. *Kollender v. Lawson*, 461 U.S. 352 (1983); *Bystrom v. Fridley High Sch., Ind. Sch. Dist. 14*, 822 F.2d 747 (8th Cir. 1987); *Anable v. Ford*, 653 F.Supp. 22 (W.D. Ark.1985).

Although N.J.S.A. 18A:40-A-10 mandates that every school district promulgate a *clear* substance abuse policy, the judge at the Superior Court, Chancery Division stated that the prom rules should be rewritten before the next prom and the New Jersey State

Board of Education issued a directive that Respondents revise their prom regulations to avoid future misunderstandings.

Both of these tribunals have made it apparent that in conflict with the United States Supreme Court in *Kollender, supra,* with the Court of Appeals in *Bystrom, supra,* and with the U.S. District Court in *Anable, supra,* the school regulations were not sufficiently defined, and were in violation of Petitioners' due process rights.

Furthermore, in *Claiborne v. Beebe School Dist.,* 687 F.Supp. 1358 (E.D.Ark. 1988), the United States District Court found that the school's regulation prohibiting the use of alcohol or drugs "prior to" coming onto school grounds or to a school sponsored event was unconstitutionally vague. This decision conflicts with Respondents' prom regulations which claimed that students who attempted to attend the prom in an "unsatisfactory condition" would be restricted from participating in all end of year school sponsored activities, including graduation exercises.

The Park Ridge prom regulations offered no definition of "unsatisfactory condition" and Respondents arbitrarily decided that once having consumed a sip of champagne, Petitioners were in an "unsatisfactory condition."

Respondents' actions were inconsonant with N.J.S.A. 18A:40A-11 which mandates that schools promulgate policy for the treatment and discipline of students who are in possession of or under the influence of alcohol *in school* or *at a school function.* It defines a student "under the influence of alcohol" as one who shows "significant symptoms of the use of those substances on school property or at school functions."

Petitioners have held from the outset of this case that Respondents

do not have the statutory authority to discipline students who consume alcohol prior to arriving at school or a school function or students who are in an "unsatisfactory condition."

Furthermore, State Board member John T. Klagholz insisted that there was no evidence whatsoever that Petitioners were in possession of alcohol or in "unsatisfactory condition."

In disciplining students for being in "unsatisfactory condition," not only have Respondents exceeded their authority and invalidated N.J.S.A. 18A:40A-11, they have denied Petitioners their due process rights.

In the Park Ridge prom regulations, rule nine claims that students who attempt to attend the prom in possession of alcohol or in an "unsatisfactory condition," will be precluded from attending the graduation ceremony. Although there is no definition of "unsatisfactory condition," the first sentence of rule nine states that any students suspected of "being under the influence of" drugs or alcohol will be examined and tested immediately. Although R.F. and L.H. repeatedly asked Mr. Binotto to have them tested, he refused to do so. Petitioners have stated from the outset of this case that R.F. and L.H. were entitled to testing to prove they were neither under the influence of alcohol nor in "unsatisfactory condition."

Allowing students suspected of being under the influence of alcohol to be tested while not allowing students "in unsatisfactory condition" to be tested, is unfair and unequal treatment.

State Board of Education member John T. Klagholz found this a violation of Petitioners' due process rights. In opposing the State Board's decision, he stated:

"The net effect, therefore, is the high school Principal, in essence, on his own motion says, that for purposes of disciplining these two students I will rewrite the regulation, offer no evidence and not give them the opportunity to rebut demonstrable facts which the Principal would submit. I think that denies them their fundamental due process."

In the instant case, Petitioners were given written notice by the principal that in consuming alcohol prior to the prom, they were in violation of the school's Substance Abuse Policy 5131.6 and the Prom regulations. No specific rules were pointed out in the letter or at the hearing before the Board. However, in *Warren County, supra,* at 461, the Supreme Court of Mississippi found that a school is required to state what rule was violated.

Following the Board hearing, the Petitioners were then informed by the Board that they were being precluded from all year-end activities, including the graduation ceremony, because rule nine of the prom regulations sanctioned disciplinary action for any students who were in an "unsatisfactory condition" at the prom. In confirming this finding, the decision of the Superior Court of New Jersey, Appellate Division, conflicts with the decision of the Court of Appeal of Louisiana, which found that converting the original charge from one part of Louisiana statute to charges that fall under other subsections of the statute clearly violates the student's constitutional right to due notice of the nature and cause of the charges against him. *Labrosse v. St. Bernard Parish School Board,* 483 So.2d 1253, 1257 (La. App. 4 Cir. 1986).

In *Cole v. State of Arkansas,* 68 S.Ct. 514, this Court cited its finding in *De Jonge v. State of Oregon,* 299 U.S. 353, 362:

> "It is as much a violation of due process to send an accused to prison following conviction of a charge on which he was never tried as it would be to convict him upon a charge that was never made." 68 S.Ct. at 517.

In disciplining Petitioners for being in "unsatisfactory condition" after charging students with consuming alcohol prior to the prom, Respondents have denied Petitioners of their due process rights.

Disciplining Petitioners by citing unclear prom regulations, failing to test students in accordance with Respondents' own regulations, disciplining students for being in "unsatisfactory condition," without defining that term and without statutory authority, never enumerating which rules were violated by Petitioners and claiming the students were in violation of the rules because they consumed alcohol prior to the prom and then converting that charge to state that Petitioners were in "unsatisfactory" condition after their appeal hearing are all in violation of Petitioners' Fourteenth Amendment rights to procedural due process. Furthermore, these acts are all in conflict with the decisions of the U.S. Supreme Court in *Kollender, supra*, the U.S. District Court (E.D. Ark.) in *Claiborne, supra*, the Supreme Court of Mississippi in *Warren County, supra*, and the Court of Appeal of Louisiana in *Labrosse, supra*.

Petitioners were denied participation in the graduation ceremony without procedural due process and seek compensatory and punitive damages.

III

N.J.S.A. 18A:40A-11 does not sanction the disciplining of students who consume alcohol on the way to school functions, to school or in a student's home and the Superior Court of New Jersey, Appellate Division erred by not finding that Respondents' actions exceeded state law.

N.J.S.A. 18A:40A-11 is stated in simple language and is plain on its face. It mandates that each board of education shall adopt policy for the treatment and discipline of pupils involved with incidents of possession or abuse of substances "******on school property or at school functions*, or who show significant symptoms of the use of those substances *on school property or at school functions*." (emphasis added) It does not say "on the way to" or "prior to" arriving at school or school functions.

Petitioners assert that Respondents did not have the statutory authority to discipline R.F. and L.H. for taking a sip of champagne prior to arriving at the school prom. Although the language and intent of the prom rules warn students about consuming alcohol prior to the prom, it does not prohibit such action nor is it sanctioned by N.J.S.A. 18A:40A-11.

N.J.S.A. 18A:37-2j. is the only related state statute concerning the disciplining of students involved with alcohol. In its list of causes that a school may suspend a student it states:

> "Knowing possession or knowing consumption without legal authority of alcoholic beverages or controlled dangerous substances *on school premises*, or being under the influence of intoxicating liquor or controlled dangerous substances while *on school premises*." (emphasis added)

There is no reason to assume or even guess that either statute indicates any rational basis for a connection with students involved with alcohol outside of school, unless they show significant symptoms of alcohol use.

In simple terms and language, N.J.S.A. 18A:40A-11 sanctions the disciplining of students who are involved in the possession or use of substances "on school property or at school functions, or who show significant symptoms of the use of those substances on school property or at school functions." There is no hidden meaning or implication in these words. This Court has found that if the language of a statute is unambiguous, in the absence of a clearly expressed legislative intention to the contrary, such language must be considered conclusive. *Reves v. Ernst & Young* 113 S. Ct. 1163. Furthermore, the United States Supreme Court has also held that if the words of a statute are unambiguous, the courts must presume that the legislature says what it means and means what it says. *Connecticut Nat. Bank v. Germain* 112 S. Ct. 1146.

The Legislature of New Jersey has explicitly mandated that every school district have *clear* policies for the treatment and discipline of students involved in substance abuse:

N.J.S.A. 18A:40A-10 requires that each district develop a *clear* written policy for the district's program for the treatment and discipline of pupils who are substance abusers.

N.J.A.C. 6:29-6.3 (c) 2. requires: "*Specific* (emphasis added) procedures, sanctions and due process provisions for violations of the alcohol and other drug policy requiring disciplinary action by the district board of education."

In compliance with N.J.S.A. 18A:40A-11 and N.J.A.C. 6:29.6.3 (c) 2., it is not likely that the New Jersey State Legislature would formulate a drug/alcohol policy that was not clear and precise in its meaning and intent.

The United Stated Supreme Court has found that in interpreting a statute, a court will not only look into a particular clause, but will also consider the entire statute or statutes on the same subject to determine the will of the legislature. *Kokoszka v. Belford*, 417 US 642. Given the unmistakable meaning of N.J.S.A. 18A:37-2j., this Court can find that N.J.S.A. 18A:40A-11 does not sanction disciplining students who consume alcohol at home or en route to school or a school function.

Furthermore, since the judge at the Superior Court, Chancery Division advised Respondents to rewrite their prom rules and the New Jersey State Board of Education urged Respondents to revise their rules to avoid future misunderstandings, it is apparent that Respondent's prom regulations did not comply with New Jersey Statute and Administrative Code since the prom regulations are neither clear nor specific.

However, given the fact that the Superior Court of New Jersey, Appellate Division has interpreted this statute to mean that a school may, in fact, discipline students for consuming alcohol on the way to a school function, then it must also discipline students who consume alcohol on the way to school. To do otherwise would be unequal, or differential treatment of the students.

The school cannot rightfully claim concern for the health and safety of students on the way to the prom without concern for students on the way to school since a large proportion if not an overwhelming proportion of students travel to the prom in chauffeured

limousines while many senior students drive themselves to school.

If students who consume alcohol before attending school or a school function are disciplined, the school cannot fairly punish students who do so on the way to school or a school function while not disciplining students who do so in their homes. Otherwise, a student could consume alcohol every day at home before attending school without penalty while the student who takes one sip of champagne on the way to a prom is severely penalized. This would represent unequal or differential treatment.

Prohibiting students from consuming alcohol in their home is not within the authority of school officials. In fact, the Supreme Court of Mississippi stated that it was unlikely that a school board would have the authority to make such a rule. *Warren County, supra,* at 460.

Because punishing a student for consuming alcohol in his home before arriving at school would be a violation of a student's constitutional right, N.J.S.A. 18A:40A-11 could not sanction disciplining a student for consuming alcohol in his home or on the way to school or a school function.

In *Missouri P.R. Co. v. Boone,* 270 U.S. 466, the United States Supreme Court held that a statute would not be construed in a manner that would raise a grave and doubtful constitutional question if another construction is available.

While it is true that a prom is a privileged activity as opposed to a mandated entitlement, a school cannot set forth arbitrary and unsanctioned punishments in its rules. Football players who consume alcohol outside of school during the season are subject to suspension from team participation. A reasonable regulation for the

prom would be to assert that anyone consuming alcohol prior to arrival would forfeit participation. This would provide a reasonable penalty for noncompliance and serve as an effective deterrent to undesirable behavior. However, the unambiguous language of N.J.S.A. 18A:40A-11 precludes disciplining students who consume alcohol prior to arriving at school or a school function if they do not show significant symptoms of alcohol use.

For all the above reasons, Respondents did not have the statutory authority to discipline Petitioners and have exceeded their authority. Petitioners therefore seek damages.

CONCLUSION

For all the reasons set forth above, Petitioners respectfully request that a Writ of Certiorari be granted to review the order of the Superior Court of New Jersey, Appellate Division, or in the alternative, that this matter be remanded to the Supreme Court of New Jersey.

Respectfully submitted,

Meredith Freedman
Pro Se on behalf of Petitioners

Thomas Hennessy
Pro Se on behalf of Petitioners

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SUPREME COURT OF NEW JERSEY

R.F., etc., et al., Plaintiffs-Petitioners, v. Board Of Education of The Borough of Park Ridge, et al., Defendants-Respondents.	ON PETITION FOR CERTIFICATION C-632 September Term 1993 37,861

To the Appellate Division, Superior Court:

A petition for certification of the judgment in A-5058-92 having been submitted to this Court, and the Court having considered the same;

It is ORDERED that the petition for certification is denied, with costs.

WITNESS, the Honorable Robert N. Wilentz, Chief Justice, at Trenton, this 22nd day of February, 1994.

/s/ Stephen W. Townsend

CLERK OF THE SUPREME COURT

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION

In The Matter Of R.F., et al, Appellants, vs. Board Of Education of The Borough of Park Ridge, Respondent.	DOCKET NO. A-5058-92T2 MOTION NO. M-1147-93 BEFORE PART: F JUDGE (S) : COLEMAN THOMAS LEVY

Cross Motion Filed: October 25, 1993
By: Park Ridge Board Of Education

Answer (s) Filed:
By:

Submitted To Court: November 22, 1993

ORDER

This matter having been duly presented to the court, it is on this 22nd day of November, 1993, Hereby ordered as follows:

	GRANTED	DENIED	OTHER
Cross Motion By Respondent For Summary Disposition	(X)	( )	( )

SUPPLEMENTAL: The decision of the State Board of Education is affirmed.

FOR THE COURT:

/s/ James H. Coleman

JAMES H. COLEMAN, JR., P.J.A.D.

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION

In The Matter Of R.F., et al,	
Appellants,	DOCKET NO. A-5058-92T2
	MOTION NO. M-941-93
vs.	BEFORE PART: F
	JUDGE (S) : COLEMAN
	THOMAS
Board Of Education of	LEVY
The Borough of Park Ridge,	
Respondent.	

Motion Filed:	September 27, 1993
By:	Meredith Freedman, et al
Answer (s) Filed:	October 25, 1993
By:	Park Ridge Board Of Education
	October 29, 1993
	State Board Of Education
Submitted To Court:	November 22, 1993

ORDER

This matter having been duly presented to the court, it is on this 22nd day of November, 1993, Hereby ordered as follows:

	GRANTED	DENIED	OTHER
Motion By Appellants Meredith Freedman and Thomas Hennessy For Summary Disposition	( )	(X)	( )

SUPPLEMENTAL: The decision of the State Board of Education is affirmed. See M 1147.

FOR THE COURT:

/s/ James H. Coleman

JAMES H. COLEMAN, JR., P.J.A.D.

STATE OF NEW JERSEY
DEPARTMENT OF EDUCATION
STATE BOARD OF EDUCATION

R.F. et al and L.H. et al, Petitioners-Appellants, vs. Board Of Education of The Borough of Park Ridge, Bergen County, Respondent-Respondent.	EDU #4470-92 C # 293-92 SB # 67-92 DECISION (Filed May 5, 1993)

Decided by the Commissioner of Education,
November 30, 1992

For Petitioners-Appellants,
Meredith Freedman, *pro se* and Thomas Hennessy, *pro se*

For the Respondent-Respondent, Fogarty & Hara
(Stephen R. Fogarty, Esq., of Counsel)

The State Board of Education affirms the decision of the Commissioner of Education. In so doing, we concur with the Administrative Law Judge (ALJ) that:

"...what the policy says is clear. It might have been phrased better, but...it is absolutely clear...there was adequate warning from

the written regulations and from the meetings with the students, and there was warning to the parents of what could happen..there was an agreement by both sides that they would comply with the rules...there was a breach of rules by the students, and...the Board acted reasonably in light of what it could have done in implementing its discipline when the rules were breached."

Initial Decision, at 6.

Although we recognize that there is no relief that could be granted to petitioners' children in that graduation has passed, our decision does not rest on those grounds. Rather, our review of the papers filed in this appeal reinforces our conclusion that, for the reason expressed in the decision below, the Board was entitled to summary judgment based on the merits of the case.

Additionally, as indicated above, we agree with the ALJ that the Board's policy was clearly communicated in this case. However, to reduce the possibility of misunderstanding in the future concerning the wording of the Board's policy, we urge the Board to review its written policy to determine if it can be phrased better.

John T. Klagholz opposed.
May 5, 1993
Date of Mailing May 7, 1993

STATE OF NEW JERSEY
DEPARTMENT OF EDUCATION

R.F. et al and L.H. et al, Petitioners, vs. Board Of Education of The Borough of Park Ridge, Bergen County, Respondent.	OAL DKT. NO. EDU 4470-92 Commissioner Of Education DECISION (Filed November 30, 1992)

The record and initial decision rendered on Motion for Summary Judgment have been reviewed. Petitioners filed timely exceptions pursuant to the applicable provisions of N.J.A.C. 1:1-18.4 and the Board filed timely reply exceptions.

Petitioners cite three exceptions. The first claims the ALJ did not consider their written response to the Board's motion for summary decision when the initial decision was rendered. Petitioners aver they are entitled to consideration of a written response.

Exception two avers the Board's counsel misstated facts that were later denied by the ALJ and counsel regarding whether the minors in question were under the influence of alcohol at the time of their attendance at the school prom in June 1992.

Exception three claims the ALJ refused to look at or consider the guidelines of *Student Codes of Conduct: a Guide to Policy Review and Code Development,* a publication of the New Jersey State Department of Education, that they feel is pertinent in dealing with "unique situations of student conduct outside of school and after school hours***." (Exceptions, at p. 6) Petitioners find such publication is useful for purposes of "clarifying the authority of school administrators in disciplining students." (Id.)

Upon careful and independent review of the record of this matter, which includes a review of all the written submissions of the parties, the Commissioner adopts as his own the findings and determination of the Office of Administrative Law granting summary judgment to the Board. As noted by the ALJ, this matter is now moot because the students in question have graduated, no record of the incident in question remains in their records and because the Commissioner is without authority to grant punitive damages or attorney costs and fees as sought in petitioners' prayer for relief. The important public policy question raised in this matter, however, and petitioners' entitlement to a review of the plenary hearing on the merits of their claims of arbitrary action on the Board's part in denying the pupils in question attendance at the prom and graduation ceremonies as a result of their admission of having drunk champagne on the way to the prom last June warrant some further comment on this case notwithstanding its mootness.

The Commissioner's review of the record comports with the ALJ's finding that the Board's policy regarding pupil conduct at the school prom was known to the students and that it warned of sanctions to be meted upon any student found to have imbibed in alcoholic beverages before, during or after attendance at the prom. See initial decision at pages 5-6. The record also reveals the uncontested fact that the minor pupils in question did drink champagne in a limousine on the way to said prom.

Based upon such findings, the Commissioner cannot express strongly enough his agreement with the ALJ's determination that the Board's assessing the penalties it did against the pupils in question was in accord with its regulations, education policy and state law. Let there be no misunderstanding of the Commissioner's conviction in this regard: be it a sip, a slug or a keg of alcohol consumed on the way to during or following a school-sponsored event, such behavior as exhibited by these teen-aged students,who were fully cognizant of the consequences that could flow from their voluntary act, cannot and will not be sanctioned, excused or mitigated in the face of the Legislature's clear intent as stated in N.J.S.A. 18A:37-1 and reflected in the Board's policy on prom deportment, "that the public schools of the State of New Jersey will act to "help control the problem of youth/alcohol abuse, especially in the school." (Senate Education Committee Statement)" *G.L.H., by his guardians ad litem, G.H.H. and G.R.H. v. Board of Education of the Hopewell Valley Regional School District et al, Mercer County,* 1987 S.L.D. 891, 901, aff'd as moot State Board 906.

Further, as bespoken by the ALJ and embodied in case law, the Board's disciplinary authority in such situations extends beyond the four corners of the school building, to include school functions that take place off premises. See, e.g., *A.F., by her guardian ad litem B.M.H. v. Board of Education of the Township of Holmdel, Monmouth County,* 1991 S.L.D. 914. Moreover, as mentioned by the ALJ, such activities as attending a school-sponsored prom or graduation ceremonies are special privileges. As such these privileges can be revoked for infractions of school rules, of school policy and of state law. See initial decision at page 5. Thus, the Commissioner finds the Board was entirely within its discretionary authority and exhibited no abuse of such authority in assessing the penalties at issue herein. *Boult and Harris v. Board of Education of Passaic,* 1939-49 S.L.D. 7 (1946), aff'd 136 N.J.L. 521 (E.&A. 1948)

In so concluding, the Commissioner notes that the instant decision has considered, addressed and disposed of all pertinent issues raised in petitioners' filings, including its Brief in Opposition to the Board's Motion for Summary Judgment. Hence, there is no basis for remanding this matter for further review by the Office of Administrative Law, and the instant Petition of Appeal is dismissed, with prejudice.

/s/ John Ellis

COMMISSIONER OF EDUCATION

November 30, 1992
Date of Mailing - November 30, 1992

STATE OF NEW JERSEY
OFFICE OF ADMINISTRATIVE LAW

R.F. et al and L.H. et al, Petitioners, vs. Board Of Education of The Borough of Park Ridge, Bergen County, Respondent.	Initial Decision Summary Decision OAL DKT. NO. EDU 4470-92

M.F., for petitioner R.F., a minor

T.H., for petitioner L.H., a minor

Stephen R. Fogarty, Esq., for respondent (Fogarty & Hara, attorney)

Record Closed: October 2, 1992
Decided: October 19, 1992

BEFORE EDITH KLINGER, ALJ:

Petitioners, R.F. and L.H., by their parents, M.F. and T.H., sought an order from the Commissioner of Education allowing them to participate in graduation ceremonies and granting them compensatory and punitive damages from respondent, the Board of Education of Park Ridge (Board), which denied them the privilege of participating in year-end school activities, including their graduation. They further seek attorney's fees and costs of their suit.

In an Order on Application for Emergent Relief dated June 18, 1992, Bruce R. Campbell, ALJ, denied the petitioners' requests that R.F. and L.H. be permitted to take part in the June 18, 1992 graduation exercise at Park Ridge High School on the grounds that they were unlikely to prevail upon the merits at hearing. The Order was affirmed by the Commissioner on June 19, 1992.

The matter was set down for plenary hearing on October 2, 1992.

Prior to that date, the Board made a motion for summary decision to dismiss the petition on the grounds that there were no material facts in dispute, that respondent was entitled to summary decision as a matter of law, and that the matter was moot, there being no relief which could be granted to petitioners.

The board's motion was received by the undersigned on September 22, 1992. Because petitioners were pro se, they expressed their concern about preparing responses to the Board's motion by October 2, the date set down for hearing. Petitioners were directed to submit their response, which was received on September 29, 1992, and the motion was argued on the record on October 2, rather than having the hearing proceed on that date.

Petitioners argued in their papers and on the record that summary decision should be denied to the Board because it did not follow its own regulations in disciplining the students and because the discipline imposed was too harsh. They further argued that these students were not sufficiently warned in the prom regulations of the consequences that would follow from a breach. They also claim that the school district has no legal authority to regulate the activities of students which do not take place on school premises or at school functions.

The Board promulgated its Policy 5131.6: Substance Abuse pursuant to the direction of N.J.S.A. 18A:40A-9 through 21. "Substance" as defined in N.J.S.A. 18A:40A-9 includes alcoholic

beverages. "Substance abuse" as defined in the same statute includes the consumption or use of alcoholic beverages "for purposes other than for the treatment of sickness or injury as prescribed or administered by a person duly authorized by law to treat sick and injured human beings." I CONCLUDE from the statute that it is not necessary that a student be under the influence of alcohol to come within the statute; mere consumption is sufficient.

N.J.S.A. 18A:40A-11 directs each board of education to adopt and implement policies and procedures for dealing with substance abuse as defined above "on school property or at school functions." From this, I CONCLUDE that a local board has the statutory authority to adopt policies and procedures governing the discipline of pupils involved in the use of substances at school functions.The only requirement is that these policies and procedures be adopted and implemented in accordance with the rules and regulations promulgated by the State Board. N.J.S.A. 18A:40A-11,

Board Policy 5131.6 provides in relevant part:

> The Park Ridge Board of Education recognizes that substance use and abuse is a serious problem in society. It also recognizes that the school plays a vital role in efforts of the community to control this problem. The Board further believes that a combination of an educational and corrective approach to the problem of substance abuse is more effective than one which is solely punitive.
>
> The use by students of illegal substances is prohibited at all times in all school buildings, on school property, and at any activity sponsored by and under the supervision of school officials.
>
> Consistent with NJSA 6:29-9, the Park Ridge Board of Education directs the Superintendent of Schools to develop administrative procedures for the evaluation and treatment of

students who possess, consume, or who on reasonable grounds are suspected of being under the influence of alcoholic beverage or a controlled substance as identified in NJSA 24:21-2; and/or any chemical or chemical compound which releases vapor or fumes causing a condition or intoxication inebriation, excitement, stupefication [sic], or dulling of the brain or nervous system including but not limited to glue containing a solvent having the property of releasing toxic vapors or fumes, as defined in NJSA 2A:170-25.9.

Pursuant to the Board policy, the Superintendent of the district developed the Prom/Snowball Regulations. These provide in relevant part:

1. Recent court rulings have stated that hosts of parties where alcohol/drugs are served and consumed will be held liable for injuries ensuing. We insist that students not host or attend pre-prom/snowball parties where alcohol/drugs will be served.

2. School officials reserve the right to inspect limousines which chauffeur students to and from the Prom/Snowball if there is reasonable suspicion of alcohol/drug consumption.

* * *

9. State Statute (N.J.S.A. 6:29-9) requires that students suspected of being under the influence of drug/alcohol by school officials be examined and tested immediately. Parents and guardians of those involved will be notified during the evening and will be asked to take their child for an immediate examination for drug/alcohol testing purposes. If the parent/guardian cannot be reached, the student involved will be accompanied to the nearest medical facility by a staff member who is chaperoning the Prom/Snowball. The school must and will implement action against those who attempt to attend the Prom/Snowball in an unsatisfactory condition and/or are found to be in possession of alcohol and or/drugs. The school may decide to prosecute violators to the fullest extent of the law (i.e. pressing charges and

the like with local authorities.) In addition, school penalties will be administered where appropriate. The penalty for members of the senior class will be restriction from participating in all end of year school sponsored activities, including graduation exercises. In addition, one will not be permitted to attend any future school-sponsored Prom/Snowballs as a guest. Guests, when in violation of these rules, will not be permitted to attend any future park Ridge High School dances.

The regulations end by warning that any student or guest who violates the regulations will be asked to leave the Prom/Snowball.

There is no dispute that prior to the prom, these regulations were sent to the parents with a sheet for their signatures and that of their child. A covering letter addressed to both parents and students specifically states, "Your signature indicates your intent to comply with these regulations." The district also met with the students to discuss these rules. There is no dispute that R.F. and L.H. drank champagne in the limousine on the way to the prom/snowball; they admit to the consumption of an alcoholic beverage. There is also no dispute that R.F. and L.H. did not appear to be under the influence of alcohol and it was not required that they submit to examination and testing. Both young women were under the legal age for drinking alcoholic beverages at the time.

The only disciplinary actions taken against R.F. and L.H. in regard to this incident were that they were directed to leave the prom and were barred from participating in year-end ceremonies at the school. In particular, they were not allowed to attend their graduations. No reference to the incident appears in the school record of either student.

I FIND that these are the only material facts in this matter and that they are not in dispute. The only issue to be resolved is whether the district acted reasonably and within the scope of its authority in regard to the action taken against the students and whether the issue

is moot since no relief may be granted to petitioners.

R.F. and L.H. argue that the Board had no authority to impose sanctions for the consumption of alcohol in the limousine since it did not take place on school property, nor had the students yet arrived at the school function. They further argue that the sanction imposed was too harsh and also, somewhat inconsistently, that the district did not act in accord with N.J.S.A. 18A:40A-12 and N.J.S.A. 6:29-6.5 when it failed to refer the students for an immediate examination for alcohol testing (see N.J.S.A. 18A:40A-9); it was even argued by M.F. and T.H. that the school should have made the incident a matter for the police, which could have resulted in the imposition of a six-month suspension of driving privileges and a $500 fine to each of the students. At the time of hearing, petitioners requested as additional relief that the school board write an apology to the two students for causing them to miss their graduation exercises.

After determining that there were no material facts in dispute, the following decision was rendered by the undersigned orally upon the record pursuant to N.J.A.C 1:1-18.2. The oral decision has been edited for purposes of clarity and grammatical accuracy.

ORAL DECISION

There are certain operative facts that are not in dispute. Both of these women admitted to having consumed champagne in a limousine or a party bus on the way to the hotel. The issue here is not inebriation. There is a school policy which prohibits consumption of alcohol in any activity sponsored by the school, including the school prom, and there are certain regulations that the Board has drawn up to implement this. The prom regulations prohibit consumption of alcoholic beverages during travel to the prom and, in fact, because of the limousine provision in the regulations, create the right to search the limousine.

I will not take any word of these regulations out of context here. The whole context of them prohibits the use of alcohol during travel, and I will not accept petitioner's attempt to distinguish between "warning" and "prohibiting." A warning is sufficient. These are not young children; these are college-age young people. They should not have had the alcohol in the limousine. They were warned that something would happen, and it did.

I am also not persuaded by your argument that the school cannot govern a student's behavior other than as to consumption of alcohol on school premises or at school functions. These are special privileges that are given to the students. They are not something that students have to be allowed to attend. There does not have to be a prom; they do not have to have the graduation. These are privileges that are given to the students, and these privileges can be revoked for infractions of school rules, of school policy, and certainly of state law.

I think that whether or not these regulations could have been more artfully drafted, whether they could have used different words, prohibiting rather than warning, they are certainly reasonable. The Board took every reasonable step to warn that there would be sanctions imposed for that type of behavior . There was a special meeting with the students, and there were letters. The parents were involved in it. The regulations were sent to the parents, and you and your children agreed to abide by the prom rules, and there was a violation of them by your children.

There was no reason that they had to drink the champagne. It was a completely voluntary act, they were caught, and the consequences that they were warned of followed. The consequences that could have followed did not. I do not accept your argument that the school should have taken more drastic measures, and I do not think in a calmer moment you will feel that way. The measures that were taken were moderate, to say the least—that they could not attend subsequent functions. The school could have made a police matter

out of it, and I do not really think that would have been preferable.

So, I think that what the policy says is clear. It might have been phrased better, but I think it is absolutely clear. I think there was an agreement by both sides that they would comply with the rules. I think there was a breach of rules by the students, and I think that the Board acted reasonably in light of what it could have done in implementing its discipline when the rules were breached. It does not have to be what you or I would have done. It does not have to be what you might think of now, as an afterthought. That does not matter. The fact is that they acted reasonably and in accord with their regulations and with their agreement with the students. I do not FIND that there was any unreasonable behavior on behalf of the Board, and I do not FIND that their acts were arbitrary and capricious.

The students were barred from attending graduation in accordance with the school rules, and no trace of it remains in their records. The incident is over. I CONCLUDE that the matter is moot and there is no relief that can be granted. I certainly would not, under any circumstances, order the Board to send a letter of apology to students that have acted illegally—apologizing for enforcing a very important state policy, education policy, Board policy, health policy, and safety policy. There is no way I could ever do that.

I CONCLUDE that the District acted reasonably and in accord with its regulations, and there is no relief that can be granted. I CONCLUDE that the Board is entitled to summary decision dismissing this matter on all grounds. So, I ORDER that this petition be DISMISSED.

I hereby FILE this initial decision with the COMMISSIONER OF THE DEPARTMENT OF EDUCATION for consideration.

This recommended decision may be adopted, modified or rejected by the COMMISSIONER OF THE DEPARTMENT OF EDU-

CATION who, by law, is authorized to make a final decision in this matter. If the Commissioner of the Department of Education does not adopt, modify or reject this decision within forty-five (45) days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

Within thirteen (13) days from the date on which this recommended decision was mailed to the parties, any party may file written exceptions with the COMMISSIONER OF THE DEPARTMENT OF EDUCATION, 225 West State Street, CN 500, Trenton, New Jersey 08625, marked "Attention: Exceptions." A copy of any exceptions must be sent to the judge and to the other parties.

October 19,1992	/s/ Edith Klinger
DATE	EDITH KLINGER, ALJ
	Receipt Acknowledged:
10/20/92	/s/ Maureen R. Keller
DATE	DEPARTMENT OF EDUCATION
	Mailed to Parties:
OCT 22 1992	/s/ Jaynee LaVecchia
DATE	OFFICE OF ADMINISTRATIVE LAW

STATE OF NEW JERSEY
DEPARTMENT OF EDUCATION

R.F., individually and by her parents R. and M.F., R.F., and M.F.; L.H., individually and by her parents T. and C.H., T.H and C.H., Petitioners, vs. Board Of Education of The Borough of Park Ridge, Bergen County, Neil Giovaniello, Louise Ruhle, George Apfel, Kathleen Coleman, George Gretsas, Gerald Hoffman, James Violante, Emil Binotto and Catherine Mozak, Respondent.	Commissioner Of Education Decision On Motion (Filed June 18, 1992)

For Petitioners, David N. Cohen, Esq.
(Budd, Larner, Gross, Rosenbaum, Greenberg & Sade)

For Respondents, Stephen R. Fogarty, Esq.
(Fogarty & Hara)

This matter has come before the Commissioner of Education by way of Motion for Emergent Relief filed by faxed transmission on June 18, 1992 seeking a stay of the Board's determination denying R.F. and L.H. participation in the graduation exercises to be conducted on June 18, 1992 as a result of their having violated Board

policy bespeaking prom rules and regulations which prohibit attendance at the Prom/Snowball in an "unsatisfactory condition" and/or are found to be in possession of alcohol and/or drugs following said students' admission that they each had had a "sip" of champagne on a bus ride to the prom. The matter was transmitted to the Office of Administrative Law for hearing on June 18, 1992 following an Order having been issued on June 18, 1992 from Superior Court, Bergen County, transferring the matter to the Commissioner of Education's jurisdiction.

The Commissioner of Education has designated his authority to hear and decide this matter to Deputy Commissioner John W. Woodbury pursuant to N.J.S.A. 18A:4-33.

Upon careful consideration of the arguments raised by the parties, which review includes consideration of the oral arguments of the parties at the hearing conducted by the Office of Administrative Law, and the ALJ's oral decision, the Commissioner DENIES the Motion for Emergent Relief for failure to meet those standards articulated by the Court for *pendente lite* restraints as set forth in *Crowe v. DeGioia*, 90 N.J. 126 (1982).

/s/John C. Woodbury
DEPUTY COMMISSIONER OF EDUCATION

June 18, 1992
Date Of Mailing - June 19, 1992

STATE OF NEW JERSEY
OFFICE OF ADMINISTRATIVE LAW

R.F. and L.H., by their parents, Petitioners, v. Board Of Education of The Borough of Park Ridge, Respondent.	TRANSCRIPT ORAL DECISION ON MOTION FOR EMERGENT RELIEF OAL DKT.NO. EDU 4470-92 AGENCY DKT. NO. 275-6/92 (Filed June 18, 1992)

Carl Greenberg, Esq., and David N. Cohen, Esq., for petitioners (Budd, Larner, Gross, Rosenbaum, Greenberg & Sade, attorneys)

Stephen R. Fogarty, Esq., for respondent (Fogarty & Hara, attorneys)

BEFORE BRUCE R. CAMPBELL, ALJ:

The petitioners sought an order of the Commissioner of Education directing that R.F. and L.H. be permitted to take part in the June 18, 1992 graduation exercise at Park Ridge High School.

The Park Ridge Board of Education denied this privilege to R.F. and L.H. because of alleged consumption of alcoholic beverages on June 5, 1992 immediately before the school's prom and contrary to published school regulations.

This matter was transmitted to the Office of Administrative Law by the Department of Education on June 18, 1992 pursuant to N.J.S.A.52:14F-1 et seq. Emergent hearing was requested and granted. This judge received papers by telephone facsimile transmission and heard the arguments of counsel by telephone beginning at 2:30 p.m. on June 18, 1992.

This is a transcript of the June 18, 1992 oral decision on motion for emergent relief.

First and foremost the Board has a right to prescribe codes of conduct for its pupils and one of the first things I did look up was the Board policy that's enunciated in a document separate from the things that pertain strictly to the prom. It was a numbered policy. I believe that's in the Board's papers, Exhibit D. That's what I am trying to point out. It is Policy 5131.6 and four paragraphs down it says the use by students of an illegal substance is prohibited at all times in all school buildings on school property and at any activities sponsored by and under the supervision of school officials. Now that doesn't admit a degree and I suppose theoretically it would be charming to discuss whether there is a constitutional infirmity there. I don't see one. The policy is clear. It is unambiguous. Second, participation in graduation exercises as noted is a privilege, not a right. The underlying incident is not denied. I believe that the Board responded appropriately to the incident and had no duty to distinguish amounts consumed. The rules prohibit alcohol consumption, not excessive alcohol consumption and as counsel pointed out, the standards for emergent relief are similar to those for a temporary restraining order in the Superior Court. Is there immediacy of harm. In this case yes. Graduation is tonight. Is there likelihood ...I'm sorry, is there irreparability of harm. In this case yes in the sense that once missed it cannot somehow be made up and this is a terrible emotional toll on parents and relatives. I certainly can see that. But the last prong I don't think can be cleared. Is there likelihood of prevailing on the merits. In this case, no.

I CONCLUDE that the Board's act cannot be called arbitrary, capricious or unreasonable on this record. I am sorry, but I am going to deny the application for emergent relief. I'll have this transmitted to the Department of Education as quickly as possible.

This order on application for emergency relief may be adopted, modified or rejected by the COMMISSIONER OF THE DEPARTMENT OF EDUCATION who by law is authorized to make a final decision in this matter. The final decision shall be issued without undue delay, but no later than forty-five (45) days following the entry of this order. If the COMMISSIONER OF EDUCATION does not adopt, modify or reject this order within forty-five (45) days, this recommended order shall become a final decision on the issue of emergent relief in accordance with N.J.S.A. 52: 14B-10.

18 June 1992
DATE

/s/ Bruce R. Campbell
BRUCE R. CAMPBELL, ALJ

SUPERIOR COURT OF NEW JERSEY
CHANCERY DIVISION

R.F., individually and by her parents R. and M.F., R.F., and M.F.; L.H., individually and by her parents T. and C.H., T.H and C.H., Plaintiffs, vs. Park Ridge Board Of Education, Neil Giovaniello, Louise Ruhle, George Apfel, Kathleen Coleman, George Gretsas, Gerald Hoffman, James Violante, Emil Binotto and Catherine Mozak, Defendants.	CIVIL ACTION ORDER OF TRANSFER (Filed June 18, 1992)

This matter having been opened to the Court by Budd Larner Gross Rosenbaum Greenberg & Sade, P.C., attorneys for plaintiffs, and the Court having read and considered plaintiffs' Verified Complaint and Brief and opposing papers and having heard the oral argument of counsel, and for good cause shown;

IT IS on this 18th day of June, 1992;

ORDERED that plaintiffs' application for preliminary restraints is hereby denied; and it is further

ORDERED that plaintiffs Verified Complaint because of failure to exhaust administrative remedies is transferred to the Commissioner of Education; and it is further

ORDERED that a copy of this Order shall be served on plaintiffs within seven (7) days of receipt by defendants.

/s/ Kevin O'Halloran

J.S.C.

KEVIN M. O'HALLORAN, P.J. CH.

Park Ridge High School Prom/Snowball Regulations

1. Recent court rulings have stated that hosts of parties where alcohol/drugs are served and consumed will be held liable for injuries ensuing. We insist that students not host or attend pre-prom/snowball parties where alcohol/drugs will be served.

2. School officials reserve the right to inspect limousines which chauffeur students to and from the Prom/Snowball if there is reasonable suspicion of alcohol/drug consumption.

3. Students will not be permitted to rent a room or facility prior to, during or after the Prom/Snowball. Violators will not be permitted to attend the Prom/Snowball.

4. No alcohol/drugs will be brought onto the Prom/Snowball site.

5. No alcohol will be served to any student or guest who attends the Prom/Snowball, regardless of age.

6. No corsage or flower boxes are to be brought into the Prom/Snowball site.

7. Once one has entered the Prom/Snowball at the beginning of the evening, that person will not be permitted to leave the building unless accompanied by a chaperone.

8. In the event of a suspected alcohol of substance abuse situation, school officials reserve the right to search pocketbooks and the like.

9. State Statute (N.J.S.A. 6:29-9) [sic] requires that students suspected of being under the influence of drug/alcohol by school officials be examined and tested immediately. Parents and guardians of those involved will be notified during the evening and will be asked to take their child for an immediate examination for drug/alcohol testing purposes. If the parent/guardian cannot be reached, the stu-

dent involved will be accompanied to the nearest medical facility by a staff member who is chaperoning the Prom/Snowball. The school must and will implement action against those who attempt to attend the Prom/Snowball in an unsatisfactory condition and/or are found to be in possession of alcohol and/or drugs. The school may decide to prosecute violators to the fullest extent of the law (i.e. pressing charges and the like with local authorities). In addition, school penalties will be administered where appropriate. The penalty for members of the senior class will be restriction from participating in all end of year school sponsored activities, including graduation exercises. In addition, one will not be permitted to attend any future school-sponsored Prom/Snowballs as a guest. Guests, when in violation of these rules, will not be permitted to attend any future Park Ridge High School dances.

10. The Prom/Snowball officially begins at 7 P.M. All students must arrive no later than 7:30 P.M. If extenuating circumstances arise where one may arrive after 7:30 P.M., you are to contact one of the class advisors at the Prom/Snowball site via the phone (#288-6100, ext. 2430) before 7:30 P.M.

11. As is customary at Park Ridge Proms/Snowballs, a one girl-one boy couple arrangement will be in effect. Bids will not be sold to students who wish to come "stag" to the Prom/Snowball.

12. Any student or guest whose behavior is considered objectionable or unsafe to his/her self or anyone else will be asked to leave.

13. If either student or guest violates these regulations, both will be asked to leave the Prom/Snowball.

Supreme Court, U.S.
FILED
AUG 5 1994
OFFICE OF THE CLERK

No. 94-4

IN THE

Supreme Court of the United States

OCTOBER TERM, 1994

MEREDITH FREEDMAN
and THOMAS HENNESSY, et al.,

Petitioners,

vs.

BOARD OF EDUCATION OF THE BOROUGH OF PARK RIDGE, et al.,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE SUPREME COURT OF THE UNITED STATES

RESPONDENTS' BRIEF IN OPPOSITION

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BEST AVAILABLE COPY

35 pp

QUESTIONS PRESENTED

1. Whether petitioners, the parents of two individuals who were high school seniors in 1992, have standing to assert violations of the individuals' constitutional rights.

2. Whether the underlying controversy is moot and therefore not appropriately before the United States Supreme Court since the involved individuals, who are not parties to this case, have graduated from high school and can no longer participate in their graduation exercises.

3. Whether there are any special and important reasons which would provide a basis of review by the United States Supreme Court when petitioners, the parents of high school seniors who admitted consuming alcohol while traveling to a school prom, have asserted that constitutional violations occurred when the students were prohibited from participating in their graduation exercises.

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JURISDICTION

The order of the Superior Court of New Jersey, Appellate Division, granting respondents' motion for summary disposition was issued on November 22, 1993. PA2a-5a.[1] The order of the Supreme Court of New Jersey denying certification in this matter is dated February 22, 1994. PA-1a. Jurisdiction is invoked pursuant to 28 U.S.C. §1257(a).

STATEMENT OF THE CASE

Petitioners are the parents of two individuals, R.F. and L.H., who admitted to consuming alcohol while traveling to their prom on June 5, 1992. When R.F. and L.H. arrived at the prom, an odor of alcohol was detected by the principal. Consequently, R.F. and L.H. were precluded from attending the prom in accordance with the prom/snowball regulations.

Subsequent to the prom, the principal notified R.F. and L.H. that in accordance with school board policy number 5131.6 and the prom/snowball regulations, they would be prohibited from attending all of the year-end school sponsored activities. This included the baccalaureate ceremony, the senior breakfast and graduation exercises. Significantly, R.F. and L.H. were not suspended, expelled or denied their diplomas. The disciplinary action was affirmed by the superintendent of schools.

On June 15, 1992, the petitioners were granted a hearing before the board of education. They were represented by counsel. After the hearing, the board of education affirmed the decision to preclude the students from attending the above year-end school sponsored activities. To limit the negative effect the disciplinary action might have if known by third parties, the board also decided that the students' pupil records would not contain any references to the incident or the discipline imposed.

Park Ridge board policy 5131.6 entitled "Substance Abuse" defines "substance abuse" as consumption or use of any substance

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[1] "PA" denotes Petitioners' Appendix.

for purposes other than for the treatment of sickness or injury. The term "substance" includes alcoholic beverages. The policy prohibits the use of illegal substances by students at all times in all school buildings, on school property and at any activity sponsored by and under the supervision of school officials.

Pursuant to authority delegated by the board policy, the superintendent of schools in Park Ridge developed prom/snowball regulations which contain rules specifically addressing the consumption of alcohol/drugs in conjunction with the prom. These regulations direct students not to attend or host pre-prom parties where alcohol/drugs are served. The regulations state that school officials have the right to inspect limousines which drive students to the prom. They provide further that students may not bring alcohol/drugs to the prom site and that alcohol may not be served to any student or guest who attends the prom. Finally, the regulations state that the school must and will implement action against those who attempt to attend the prom in an unsatisfactory condition and/or are found to be in possession of alcohol and/or drugs. Specifically, the regulations state that the penalty for members of the senior class will be restriction from participating in all end of year school sponsored activities, including graduation exercises. PA-29a.

The prom regulations were sent to all students attending the prom, including R.F. and L.H., to be read over with their parents. After reading the regulations, parents and students were asked to sign a prom information sheet indicating that they intended to comply with the regulations. R.F., L.H. and their parents each signed such acknowledgements. To avoid any possibility of misinterpretation, the principal verbally reviewed the regulations with all of the students attending the prom. It is the above documents upon which the respondents relied in imposing discipline on R.F. and L.H.

A state administrative law judge below denied the petitioners' motion for emergent relief, finding that petitioners could not meet their burden of showing a likelihood of success on the merits. PA-23a. That decision was affirmed by the New Jersey

Commissioner of Education. PA-21a. Graduation exercises proceeded without R.F. and L.H. on June 18, 1992.

Petitioners appealed the emergent relief determination to the New Jersey State Board of Education. Respondents filed a motion to dismiss with the State Board which was granted. RA-1.[2]

The underlying petition was scheduled for plenary hearing before another state administrative law judge. Respondents filed a motion for summary decision. The administrative law judge granted the motion for summary decision, finding that the respondents had, pursuant to their authority, adopted a policy and regulations which prohibited the conduct engaged in by R.F. and L.H. PA-12a. The administrative law judge found further that the matter was moot because there was no relief that could be granted. The decision was affirmed by the New Jersey Commissioner of Education and the State Board of Education. PA-8a and 6a.

Petitioners appealed to the Superior Court of New Jersey, Appellate Division. Both petitioners and respondents filed a motion for summary disposition. Petitioners' motion was denied and respondents' motion was granted. PA-2a and 4a.

Petitioners filed a Notice of Petition for Certification with the Supreme Court of New Jersey. The New Jersey Supreme Court denied certification on February 22, 1994. PA-1a.

A petition for writ of certiorari was filed in this matter by letter dated May 17, 1994. The Petition was returned to petitioners on June 7, 1994 by the Clerk for failure to comply with the Rules of Procedure. RA-2. The corrected petitions were filed by letter dated June 27, 1994. RA-3. Whereas, the caption on the original Petition listed the petitioners as "R.F. and L.H." and their parents, the corrected Petition contained a revised caption which deleted R.F. and L.H. as petitioners. Counsel for respondents never received the corrected Petition and only learned that the corrected Petition had been re-filed on July 7, 1994. RA-4. Therefore, respondents' brief in opposition is due on August 8, 1994.

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[2] "RA" denotes Respondents' Appendix.

ARGUMENT

POINT I

THIS PETITION IS NOT PROPERLY BEFORE THIS COURT SINCE THE PETITIONERS HAVE NO STANDING AND SINCE THE CASE IS MOOT.

A. Petitioners Have No Standing

Originally, the petitioners in this matter were R.F., L.H., Meredith Freedman, the mother of R.F. and Thomas Hennessy, the father of L.H. The Petition was signed by Meredith Freedman and Thomas Hennessy. After the original Petition was filed, the Clerk's office informed the petitioners' parents that, since they were proceeding pro se, they could each represent themselves, but they could not represent anybody else. The Petition was returned because Meredith Freedman and Thomas Hennessy were attempting to represent their children R.F. and L.H. Subsequently, petitioners changed the caption on the Petition so that it no longer included R.F. and L.H. as parties. Apparently, R.F. and L.H. decided not to take part in this action which seeks to enforce their constitutional rights. Therefore, the petitioners now include only Meredith Freedman, mother of R.F. and Thomas Hennessy, father of L.H.

The petitioners in this case claim that the actions of the respondents resulted in a violation of due process and cruel and unusual punishment. Yet, the petitioners are not the individuals who suffered from the alleged constitutional violations. Therefore, they have no standing to assert constitutional violations and the Petition should be dismissed.

In order to have standing, the petitioners must allege an actual or threatened injury as a result of the conduct of the defendant, the alleged injury must be fairly traceable to the defendant's action that is challenged, and the injury alleged must be likely to be redressed by a favorable decision. *Family's Children's*

Center, Inc. v. School City, 13 F.3d 1052 (7th Cir. 1994); *Arkla Exploration Co. v. Texas Oil & Gas Corp.*, 734 F.2d 347 (8th Cir. 1984), *cert. denied*, 469 U.S. 1158 (1984); *Anable v. Ford*, 653 F. Supp. 22 (W.D. Ark. 1985). The injuries which are alleged here are violations of the constitutional rights of R.F. and L.H. The only possible injury to petitioners is that they were unable to see their children graduate. Purely psychological harm will not satisfy the standing requirement. *Family & Children's Center*, 13 F.3d at 1058. Also, any loss the petitioners might claim cannot be given a monetary value. *See*, *Dangler v. Yorktown Cent. Schools*, 711 F.Supp. 625 (S.D.N.Y. 1991) (district court found father's damages where student was rejected from honor society had no monetary value). Furthermore, even if petitioners receive a favorable decision regarding this matter, that injury cannot be redressed because R.F. and L.H. can no longer participate in their own graduation exercises. Where the party seeking to invoke the authority of the federal courts cannot show an injury likely to be redressed, this Court has found that the claim is not justiciable. *Renne v. Geary*, 111 S.Ct. 2331, 2337 (1991); *Allen v. Wright*, 468 U.S. 737, 751 (1984); *Simon v. Eastern Ky. Welfare Rights Org.*, 426 U.S. 26, 38 (1976).

Since R.F. and L.H. are over eighteen (18) years old,[3] they have the legal ability to assert their own claims based on alleged violations of their constitutional rights. Simply because they have chosen not to participate in this action does not give their parents the legal ability to pursue the claim on their behalf. There is no legal basis to confer standing to the parents of R.F. and L.H. to assert such constitutional violations on behalf of R.F. and L.H. *See Powers v. Ohio*, 111 S.Ct. 1364, 1370, (1991). A litigant must assert his own legal rights and cannot rest his claim on the legal rights of third parties. *Valley Forge Christian College v. Americans United for Separation of Church & State, Inc.*, 454 U.S. 464 (1982); *Barrows v. Jackson*, 346 U.S. 249 (1953). Where a student reached the age of majority pursuant to Kentucky law

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[3] R.F. and L.H. were seniors in high school two years ago in June, 1992. It is reasonable to assume each is over eighteen (18) years old now.

during an action against a board of education, the Sixth Circuit found that the parents of the student no longer had standing to sue in a representative capacity to enforce their son's rights. *Vandiver v. Hardin County Bd. of Ed.*, 925 F.2d 926 (6th Cir. 1991).[4] *See also Tyree v. Smith*, 289 F.Supp. 174 (E.D. Tenn. 1968). There is no reason for this Court to deviate from these sound principles and grant the parents' petition.

B. The Case Is Moot

Moreover, the petition is moot. Since R.F. and L.H. are now adults attending college, they can no longer participate in their own graduation exercises even if they were so entitled. Any references to this incident have been expunged from their high school records. Also, pursuant to the direction of the State Board, the prom regulations have been revised to specifically prohibit consuming alcohol while traveling to the Prom. *See*, PA-7a. Thus, no effectual relief can be provided to either petitioners or R.F. and L.H. Where effectual relief can no longer be afforded, the question should not be decided by a federal court. *Church of Scientology v. U.S.*, 113 S.Ct. 447, 449 (1992). *See also*, *Bethel School Dist. No. 403 v. Fraser*, 478 U.S. 675, 686, footnote.

Petitioners attempt to circumvent the mootness argument by stating that there will be more cases in the future in which students are prohibited from attending their graduation exercises. PB-14.[5] This assertion is purely speculative and is based solely on petitioners' opinions without any basis in fact. Petitioners' bold assertion does not create an injury that is actual or imminent. *See*, *Renne v. Geary*, 111 S.Ct. 2331, 2339 (1991). Indeed, if this Court were to rule on the constitutionality of the school regulations without an actual controversy, it would be issuing an advisory opinion. *See*, *Church of Scientology*, 113 S.Ct. at 450, n.6. Yet, this Court has no authority to give opinions

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[4] The age of majority in Kentucky is eighteen (18) years pursuant to Ky. Rev. Stat. §2.015. In New Jersey, the age of majority is also eighteen (18) years pursuant to N.J.S.A. 9:17B-3. Thus, the *Vandiver* case is directly applicable to this case.

[5] "PB" denotes Petitioners' brief.

upon moot questions or abstract propositions. *Mills v. Green*, 159 U.S. 651, 653 (1895). Nor does this Court sit to satisfy a scholarly interest or to benefit particular litigants. *Rice v. Sioux City Cemetery*, 349 U.S. 70, 74 (1954).

Based on the above, the petitioners have no standing to assert constitutional claims on behalf of R.F. and L.H. Also, the case is moot. Therefore, the Petition should be denied.

POINT II

WHERE THE DECISION BELOW IS CONSISTENT WITH OTHER STATE AND FEDERAL COURT DECISIONS CONCERNING THE DUE PROCESS RIGHTS OF STUDENTS, THERE ARE NO SPECIAL AND IMPORTANT REASONS FOR GRANTING THIS WRIT.

Contrary to the assertions of petitioners, the decisions below are not in conflict with other state or federal courts which have decided the same or similar issue. The jurisprudence concerning due process for students is well settled. It is unquestionable that students in a school setting are entitled to a certain amount of substantive and procedural due process. *See Bethel School District No. 403 v. Fraser*, 478 U.S. 675 (1985); *New Jersey v. T.L.O.*, 469 U.S. 325 (1984); *Wood v. Strickland*, 420 U.S. 308 (1974); *Goss v. Lopez*, 419 U.S. 565 (1974).

The amount of procedural due process to which a student is entitled depends on the sanction. For suspensions greater than ten days, this Court has held that a student may be entitled to procedural due process which is more formal than mere notice of the charge, explanation of the evidence and an opportunity to present his/her story. *Goss*, 419 U.S. at 584. However, the aforementioned is all that is required for students facing suspensions which are ten days or less. This Court stated that "a two days suspension from school does not rise to the level of a penal sanction calling for the full panoply of procedural due process protections applicable to a criminal prosecution." *Bethel School District No. 403*, 478 U.S. at 686.

Here, R.F. and L.H. admitted to consuming alcohol while en route to the prom. They and their parents previously signed a document indicating they read and understood the district's policy and regulations on substance abuse. Furthermore, the principal spoke to all of those attending the prom about the rules regarding the prom and the sanctions for violating the rules. After R.F. and L.H. were advised that they would be prohibited from attending the prom, they were given a chance to be heard by the superintendent and board of education. An analysis of the relevant state and federal law indicates R.F. and L.H. were not denied due process in violation of the Fourteenth Amendment.

Petitioners must be able to point to a legitimate claim of entitlement before they can recover for a violation of due process. *Board of Regents v. Roth*, 408 U.S. 564, 577 (1972); *Midnight Sessions, LTD. v. City of Philadelphia*, 945 F.2d 667 (3d Cir. 1991). In determining whether interests are to be protected by the Fourteenth Amendment a court must look to whether the interest is protected by state law and must weigh the importance to the holder of the right. *Brown v. Brienen*, 722 F.2d 360, 364 (7th Cir. 1983). The interests must be more than abstract desires or attractions to a benefit. *Board of Regents*, 408 U.S. at 577. While the right to a public education is protected by state law, there is no similar statutory entitlement to participation in graduation exercises. Since the interest claimed by petitioners is not protected by state law, and petitioners had no reasonable expectation of that interest once they violated the prom regulations, they were certainly not entitled to the formal due process from *Goss*.

Petitioners point to this Court's decision in *Joint Anti-Fascist Refugee Committee v. McGrath*, 341 U.S. 123 (1951) in an attempt to show a conflict in jurisprudence concerning due process. That case, however, did not involve students being punished by school officials. It involved organizations which were designated Communist by the Attorney General of the United States. This was done without notice, without disclosure of the reasons and without an opportunity for the organizations to

establish their innocence. *Joint Anti-Fascist Committee*, 341 U.S. at 161 (Frankfurter, J., concurring).

The injury complained of in *Joint Anti-Fascist Committee* was a more serious injury when compared to the injury claimed by petitioners here, and yet, no due process was afforded to the petitioners in the *Joint Anti-Fascist Committee* case. Furthermore, the decision did not turn on a due process issue. Rather, the due process discussion appears in the concurring opinion. There, Justice Frankfurter states that the action taken against the involved organizations violated due process since the organizations were afforded no notice or hearing. Petitioners cannot claim that R.F. and L.H. did not receive notice of the charges against them or a hearing.

Several cases cited by petitioners, while involving a school setting, concern long term suspensions and expulsions. Where a number of high school students were suspended from an interscholastic program for one year, a federal district court found that the students were entitled to notice of the charges and an opportunity to defend against such charges. *Kelley v. Metropolitan County Bd. of Ed. of Nashville*, 293 F.Supp. 485, 492 (M.D. Tenn. 1968). The same due process was found to be required in cases concerning long term suspensions/expulsions from state supported colleges. *Dixon v. Alabama State Board of Education*, 294 F.2d 150 (5th Cir. 1961); *Knight v. State Board of Education*, 200 F.Supp. 174, 178 (M.D. Tenn. 1961). These cases involve situations requiring formal due process as opposed to informal due process, due to the nature of the sanction. They do not address the situation where a student was merely prohibited from attending graduation exercises.

Petitioners also claim that the regulations relied upon by the respondents were not sufficiently defined and, therefore, R.F. and L.H. were not given adequate notice. PB-16. They argue further that the decision of the Superior Court of New Jersey, Appellate Division below conflicts with federal decisions which stand for the proposition that school regulations must sufficiently define prohibited conduct so as to give adequate notice to students.

The first case cited by petitioners is *Kolender v. Lawson* 461 U.S. 352 (1982). That case concerned a violation of criminal laws. Although the Court found there that the statute was unconstitutionally vague, the case is not applicable here as it concerned neither a student nor a school setting.

Similarly, in *Bystrom v. Fridley High Sch., Ind. Sch. Dist. 14*, 822 F.2d 747 (8th Cir. 1987), the court examined a school policy which allowed school administrators to review and approve an underground newspaper before it was distributed. The court, in *Bystrom* found that the policy was necessarily general because of the subjects involved. In addition, the court noted that the policy did not subject offenders to criminal sanctions and applied only to minors. The purpose of the policy was to assure that school hours and school property are devoted primarily to education. *Bystrom*, 822 F.2d at 750. Therefore, despite the general and subjective nature of the policy, the court found it was not constitutionally invalid. Obviously, this does not stand for the proposition that respondents' regulations were constitutionally infirm.

In *Anable*, *supra*, the court did not even address whether the school policy was vague and overly broad. Instead, the court found that the party asserting that claim had no standing in the suit. *Anable v. Ford*, 653 F.Supp. at 33-34.

The District Court in Arkansas found in *Claiborne v. Beebe School District*, 687 F.Supp. 1358 (E.D. Ark. 1988), that the school's regulation which prohibited the use of alcohol or drugs prior to coming on school grounds or to a school sponsored event was unconstitutionally vague. Notably, the court was not concerned that the school board did not have the authority to discipline students for conduct away from school premises. Rather, the court was concerned that the school regulation did not give adequate notice to the students because the regulation could be construed to prohibit conduct which occurred weeks prior to coming to school.

The court in *Claiborne* was, of course, examining a school regulation which was different from the policy and regulations

in this case. The regulations here have been found to provide sufficient notice to R.F. and L.H. by the Commissioner of Education in New Jersey, the New Jersey State Board of Education, the New Jersey Appellate Division and the New Jersey Supreme Court because they prohibit the use of illegal substances at all times, in all school buildings, on school property and at any activity sponsored by and under the supervision of school officials. In addition, they prohibit students from consuming alcohol at parties prior to the prom, from bringing alcohol to the prom site and from serving alcohol to any student or guest who attends the prom. The *Claiborne* case is also distinguishable because the sanction there was a semester-long academic suspension. Therefore, the *Claiborne* case does not conflict with the decisions below in this case either.

The above cases cited by petitioners concerning the specificity of school regulations merely indicate that such regulations must give adequate notice of what is prohibited and not offend the requirements of due process. *Bystrom*, 822 F.2d at 752 (quoting *Ginsberg v. New York*, 390 U.S. 629 (1968)); *Claiborne*, 687 F.Supp. at 1359. This Court has stated that school disciplinary rules need not be as detailed as a criminal code which imposes criminal sanctions. *Bethel School Dist. No. 403 v. Fraser*, 478 U.S. at 686 (1985). In light of the above, the decisions below are not in conflict with federal law.

Petitioners also point to several state decisions in an effort to support their argument that there is a conflict among courts concerning student discipline. Generally speaking, state decisions are not instructive because they rely upon state education laws which are not uniform from state to state. To the extent that they may implicate a conflict among courts concerning a federal question, we have addressed them.

In *Warren County Bd. of Educ. v. Wilkinson*, 500 So.2d 455 (1986), the court set aside the punishment imposed on a student for drinking a beer at home prior to going to school, because the school had no rule prohibiting such behavior. However, the *Warren County* case is inapposite here because the Park Ridge Board of Education promulgated rules prohibiting the concerned behavior.

The state appellate decision from Louisiana which is cited by petitioners does not conflict with the decisions below in this case either. The court in *Labrosse v. St. Bernard Parish School Board*, 483 So. 2d 1253 (La. App. 1986) found a violation of due process where the basis for a charge against a student was changed from one provision in a statute to another. There, the student was originally notified that he was being expelled for possession of marijuana pursuant to a section of a statute which prohibits such conduct on school grounds. When the facts revealed that the student was not on school grounds, the board attempted to argue for expulsion based on another section in the statute. Yet, it is apparent from petitioners' own statements that the basis for the students' punishment here did not change. From the beginning, the students admitted to consuming alcohol while traveling to the prom. Thus, they were well aware of the reason for their punishment. The most that can be said is that the notice concerning the students' infraction became more specific as time passed. Also, the *Labrosse* case concerned an expulsion, which is far more serious than the sanction at issue in this case.

In *Valentine v. Independent School District of Casey, et al.*, 191 Ia. 1100, 183 N.W. 434 (1921), the Iowa Supreme Court found that it was arbitrary and capricious for a board of education to deny diplomas to students who refused to wear gowns at the graduation exercises because the gowns smelled of formaldehyde. The court reached this conclusion because the students had performed all of the educational requirements for graduation. The rule concerning the wearing of caps and gowns had no relation "to educational values, the discipline of the school, scholastic grades, or intellectual advancement." *Valentine*, 191 Ia. at 1105, 183 N.W. at 436. Thus, the court did not pass on whether it would have been arbitrary and capricious for the board to prohibit the students from attending graduation exercises rather than prohibiting the students from graduating at all. In fact, the court went so far as to suggest that, "The board may deny the right of a graduate to participate in the public ceremony of graduation unless a cap and gown is worn." *Valentine*, 191 Ia. at 1105, 183 N.W. at 437. Moreover, this suggestion was made despite the fact that the board was unable to show that it had

formally adopted a rule regarding the wearing of caps and gowns in graduation exercises.

Petitioners contend that *Ladson v. Board of Ed., Union Free Sch. Dist. #9*, 323 N.Y.S. 2d 545 (Sup. Ct. 1971), supports their argument that preclusion of R.F. and L.H. from graduation was inappropriate. Indeed, the *Ladson* court found that a student who struck a principal with a stone should not be prevented from attending her graduation ceremonies. The decision was based in large part on the fact that there was no express authority in New York law to preclude a student from graduation exercises. Conversely, the Commissioner of Education in New Jersey has consistently found that preclusion from graduation exercises is an appropriate form of discipline. *K.L. v. Bd. of Ed. of Hopewell Valley Regional School District*, 1991 S.L.D. 1322; *P.G. v. Bd. of Ed. of Greater Egg Harbor Regional High School District*, 1989 S.L.D. ____ (Comm. Ed. July 18, 1989); *J.C. v. Long Branch Bd. of Ed.*, 1984 S.L.D. 1091; *Gertner v. Bd. of Ed. of Borough of Elmwood Park*, 1974 S.L.D. 611. Therefore, the reasoning in *Ladson* does not apply to this case.

In yet another case decided by the Iowa Supreme Court, a rule concerning the consumption of beer was found to be invalid. *Bunger v. Iowa High School Athletic Association*, 197 N.W.2d 555 (1972). The rule had been promulgated by the state association which governs interscholastic athletics. It provided that any athlete who admitted to consuming or possessing or transporting beer lost eligibility to participate in interscholastic athletics. The court found that the rule was invalid because the athletic association lacked the authority to promulgate such a rule. Also, the rule was interpreted by the school to require the punishment of a student who was only in a car in which he knew there was an untouched case of beer. The student had not actually done anything wrong, but was declared ineligible to play football based on the rule. Clearly, the *Bunger* case is distinguishable from the present case. The Park Ridge Board of Education has the authority to promulgate and enforce rules concerning consumption of alcohol by students. *See*, N.J.S.A. 18A:11-1. Also, R.F. and L.H. were punished for actually

consuming alcoholic beverages, as opposed to merely being in a car where alcohol was present.

The state court of appeals in Kentucky found the school administrators' actions to be arbitrary in *Clark County Bd. of Ed. v. Jones*, 625 S.W. 2d. 586 (Ky. App. 1981). There, the students were band members who consumed alcoholic beverages on a school-sponsored band trip. The relevant high school regulation makes suspension mandatory for a student's first offense concerning drugs or alcohol. That regulation also provides that the superintendent may recommend that offenders be expelled. The court in *Clark County* found that it was not clearly erroneous for the trial judge to conclude that school administrators should consider factors including the previous general conduct of students and the academic standing of students before expelling them.

The *Clark County* case addresses the situation where students are expelled from school, thus affecting a statutory right. Here, the students were not expelled, nor even suspended. They were simply prohibited from attending graduation. Nevertheless, the petitioners were given an opportunity to bring any factors they thought relevant to the board of education's attention at a board hearing. They have not produced any evidence that any of the factors enumerated in *Clark County* were not considered by respondents. Therefore, the *Clark County* case does not support petitioners' argument. It is, however, important to note that, the court approved the high school regulation which prohibits using alcoholic beverages while in transit to school functions. *See*, *Clark County*, 625 S.W. 2d at 589.

The last state case which petitioners cite in support of their contention that there is a conflict in the jurisprudence concerning this issue is *Betts v. Easley*, 169 P.2d 831 (1946). That case concerns a discrimination claim made by African-American railway workers against a labor organization. It has no bearing on the present situation.

Clearly, the cases cited by petitioners do not indicate a conflict among federal cases and/or state cases concerning student

discipline. They simply address different aspects of due process and/or student discipline which are clearly distinguishable from the facts of this case. The cases cited by petitioners are, to the contrary, consistent with the decisions below. Moreover, this Court has already spoken to a similar issue and has reached a conclusion consistent with the decisions below.

In *Board of Ed. of Rogers, Ark. v. McCluskey*, 458 U.S. 966 (1981), this Court considered a school policy which provided for a mandatory suspension of a student who used drugs on school premises, sold drugs on school premises or who had been under the influence on school premises. There, the involved student who left school to consume alcoholic beverages and then returned to school premises intoxicated, was suspended. The school rule was attacked because it specifically exempted alcoholic beverages from the definition of "drug". The Court reiterated what it had previously set forth in *Wood v. Strickland*, 420 U.S. 308 (1975). Specifically, the Court stated that federal courts are not authorized to construe school regulations. *Board of Ed. of Rogers, Ark.*, 458 U.S. at 969. Furthermore, this Court stated that the school board's interpretations of its own regulations control even where the federal court's interpretation is preferable. *Id.* at 971. Consequently, the school policy and the board's actions in *Board of Ed. of Rogers, Ark.* were upheld.

Likewise, the respondents' actions here should be upheld. They were based upon a school regulation which the board interpreted to prohibit the consumption of alcohol while travelling to the school-sponsored prom. Consequently, even if the respondents' interpretation was not preferable to the petitioners' under the circumstances, the respondents' interpretation should nonetheless prevail under the aforementioned case law. The parties' difference of opinion on the issue does not warrant the Court's intervention.

The above illustrates that the decisions below in this case do not conflict with any state or federal case-law. Moreover, there is no important question of federal law which has not been but should be settled by this Court. Therefore, there is no basis for review of this matter by this Court.

POINT III

THE PUNISHMENT IMPOSED ON THE STUDENTS HEREIN DOES NOT IMPLICATE THE EIGHTH AMENDMENT AND, THEREFORE, THE WRIT SHOULD BE DENIED.

Petitioners argue that the punishment imposed on R.F. and L.H. was illogical and cruel. PB-11. They suggest that the punishment violated the students' Eighth Amendment right against cruel and unusual punishment.

However, federal courts including this Court have previously ruled that the Eighth Amendment does not apply to the school setting. *See Ingraham v. Wright*, 430 U.S. 651, 671 (1977); *Ramon by Ramon v. Soto*, 916 F.2d 1377 (9th Cir. 1989); *Dickens by Dickens v. Johnson County Bd. of Educ.*, 661 F.Supp. 155 (E.D. Tenn. 1987). The reasoning behind this was that the original design of the Eighth Amendment was to circumscribe the criminal process. *Ingraham*, 430 U.S. at 667. Indeed, the Eighth Amendment was added to the Bill of Rights due to criticism that the Constitution failed to provide protection to persons convicted of crimes. *Ingraham* at 666.

In the past, this Court has had no difficulty finding the Eighth Amendment inapplicable to claims outside the criminal realm. *Id.* at 667-668. With regard to discipline imposed on school children, this Court has stated that "the prisoner and the school child stand in wholly different circumstances, separated by the harsh facts of criminal conviction and incarceration." *Id.* at 669. Furthermore, the openness of public schools and civil and criminal liability are adequate safeguards for the proper education and discipline of the child. *Id.* at 670. This Court concluded, therefore, that students who were claiming that corporal punishment was in violation of the Eighth Amendment, could not prevail because that Amendment does not apply to school discipline. Moreover, this Court stated that the need for and the appropriate means of maintaining school discipline is committed generally to the discretion of school authorities subject to state

law. *Id.* at 682. If corporal punishment did not warrant the application of the Eighth Amendment, the denial of the privilege to attend graduation does not require the Court's intervention.

Nevertheless, the petitioners are correct in that the Supreme Court of Mississippi did, in dicta, bring the Eighth Amendment to the attention of a school board with regard to a student's punishment. Apparently, when the Supreme Court of Mississippi issued its ruling in *Warren County Bd. of Ed. v. Wilkinson*, 500 So. 2d 455 (1986), it was unaware of the *Ingraham* decision, since the *Ingraham* case is not cited therein.

In *Warren County*, the court found that discipline imposed upon a student who admitted to consuming alcohol at home prior to going to school appeared unreasonable compared to the sanctions for other offenses set forth in a student handbook. *Warren County*, 500 So.2d at 461. The school rule referred to in *Warren County* prohibited the use of alcoholic beverages while traveling to school. As a consequence of what the board of education interpreted to be a school violation, the student lost all credit for a semester of school work. The Supreme Court of Mississippi decided the case on due process grounds, finding the absence of a school rule which expressly or impliedly prohibited the complained of behavior and the student was not given a proper hearing.

Although the *Warren County* case fails to take into account the *Ingraham* decision, it is still distinguishable from the present case. Here, the students consumed alcohol while en route to their school prom after being warned specifically about drinking prior to their prom. They were not expelled or suspended, and they did not lose any course credit as the student did in *Warren County*. They were simply denied the privilege of attending graduation. In addition, the students were advised of the charges against them and they were given a hearing. Thus, there was no lack of due process.

Furthermore, as noted above, the prohibition from attending graduation is a form of student discipline that has repeatedly been approved by the Commissioner of Education of New Jersey. *K.L., supra; P.G., supra; J.C., supra; Gertner, supra.* Despite

petitioners' protestations concerning this type of punishment, the petitioners themselves admit it is an accepted punishment in New Jersey. PB-12.

The petitioners point out that students who violate football rules forfeit the right to play football and students who violate band rules forfeit the right to participate in the band. They conclude that it is unfair to have a rule which requires that students who violate prom rules forfeit their participation in more activities than the prom. However, the punishment for R.F. and L.H. was that they were prohibited from attending year-end senior activities. These activities included the prom and graduation exercises. Therefore, the discipline is actually very similar to that imposed on football players and band members. Since the prom is not an ongoing activity like football and band, and since student consumption of alcohol is of serious concern to school administrators, it was more than reasonable to prevent R.F. and L.H. from attending all of the year-end activities in addition to the prom. For this reason, the punishment was extended to other similar year-end senior activities.

Based on the above, there is no merit to petitioners' claim of a violation of the Eighth Amendment of the United States Constitution. As such, petitioners have presented no special and important reason that this Petition should be heard.

POINT IV

THIS COURT IS BOUND BY THE DECISIONS BELOW INSOFAR AS THEY CONSTRUE STATE LAW

The decisions below have construed New Jersey law as upholding respondents' decision to prohibit R.F. and L.H. from attending their graduation exercises because they admitted to consuming alcohol while traveling to their prom. Petitioners argue in Point III of their brief that respondents did not have authority based in state law to take the actions that they did. However, this Court may not substitute its judgment for that of the state courts below regarding the meaning of state law. "State law means what state courts say it means." *Bates v. McCaughtrey*, 934 F.2d 99, 102 (7th Cir. 1991).

Petitioners refer specifically to N.J.S.A. 18A:40A-11, N.J.S.A. 18A:37-2j, and N.J.A.C. 6:29-6.3(c)(2), noting that the Superior Court of New Jersey, Appellate Division erred when it interpreted these provisions to allow respondents to discipline R.F. and L.H. for consuming alcohol while traveling to the prom. Thus, the petitioners are requesting that this Court find that the interpretation of the above-noted state legislation by the state courts below is flawed. This Court has consistently noted its lack of jurisdiction to construe state legislation. *R.A.V. v. City of St. Paul, Minnesota*, 112 S.Ct. 2538, 2542 (1992); *Gooding v. Wilson*, 405 U.S. 518, 520 (1971); *United States v. Thirty Seven Photographs*, 402 U.S. 363, 369 (1970); *Nash v. State of Texas*, 632 F.Supp. 951 (E.D. Tex. 1986). Therefore, this Court must accept as binding the interpretations of state law which have been set forth in the decisions below. *R.A.V.*, 112 S.Ct. at 2542; *Tyree v. J.D. White*, 796 F.2d 390, 392 (11th Cir. 1986). Where litigants have requested that federal courts overturn a state's construction of a state statute, the federal courts have declined to do so. *Bates*, 934 F.2d at 103; *Tyree*, 796 F.2d at 392. Similarly, this Petition should be denied since this Court lacks the ability to substitute its judgment for that of the state courts below concerning the construction of N.J.S.A. 18A:40A-11, N.J.S.A. 18A:37-2j and N.J.A.C. 6:29-6.3(c)(2).

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted,

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Dated: August 5, 1994

RESPONDENTS' APPENDIX

SB #29-92

R.F., individually and by her parents R. and M.F., R.F., AND M.F.; L.H., individually and by her parents T. and C.H., T.H. AND C.H.,	:	
PETITIONERS-APPELLANTS,	:	STATE BOARD OF EDUCATION
V.	:	
BOARD OF EDUCATION OF THE BOROUGH OF PARK RIDGE, BERGEN COUNTY, NEIL GIOVANNIELLO, LOUISE RUHLE, GEORGE APFEL, KATHLEEN COLEMAN, GEORGE CRESTAS, GERALD HOFFMAN, JAMES VIOLANTE, EMIL BINOTTO, AND CATHERINE MOZAK,	:	DECISION ON MOTION
RESPONDENTS-RESPONDENTS.	:	

Decided by the Commissioner of Education, June 18, 1992

For the Petitioners-Appellants, Meri Freedman and Thomas Hennessy, *pro se*

For the Respondents-Respondents, Fogarty & O'Hara (Stephen R. Fogarty, Esq., of Counsel)

Upon review of the papers submitted in this appeal, we find that the matter is moot, and we therefore dismiss the appeal. In so doing, we emphasize that the appeal before us is from a Commissioner's decision denying emergent relief and that our decision does not dispose on the merits of the underlying petition.[1]

November 4, 1992

Date of mailing NOV 5 1992

[1] We note that the parties have represented that the underlying petition is the subject of seperate [sic] proceedings and that the hearing in the matter was conducted before an Administrative Law Judge (ALJ) on October 2, 1992.

SUPREME COURT OF THE UNITED STATES
OFFICE OF THE CLERK
WASHINGTON, DC 20543

WILLIAM K. SUTER
CLERK OF THE COURT

June 7, 1994

Ms Meredith Freedman
8 Hall Court
Park Ridge, NJ 07656

Re: R.F. and L.H., et al. v. Board of Education of the Borough of Park Ridge, Bergen County, et al.

Dear Msr. Freedman:

Returned are 39 copies of a petition for a writ of certiorari postmarked May 17, 1994 and received in this office May 23, 1994 in the above-entitled case for failure to comply with this Court's Rules of Procedure.

It does not appear as though you nor Mr. Hennessy are members of the bar of this Court. Therefore, you may not represent the petitioners in this court. The Rules of this Court require that the name, address and telephone number of a member of the bar of this Court appear on the cover of the petition as counsel of record. Rule 33.2.

Corrected copies must be returned promptly in order for the case to be docketed. Rule 33.7.

Very truly yours,

William K. Suter, Clerk

By

(Mrs.) Loretta S. Ruffin
Assistant Clerk

Enclosures

cc: David E. Powers
Stephen R. Fogarty

8 Hall Court
Park Ridge, New Jersey 07656

June 27, 1994

William K. Suter
Office of the Clerk
Supreme Court of the United States
Washington, DC 20543

Re: Meredith Freedman and Thomas Hennessy et al., v. Board of Education of the Borough of Park Ridge, Bergen County, et al.

Dear Mr. Suter,

Enclosed please find 39 corrected copies of our petition for a Writ of Certiorari in the above-entitled case. As instructed by your office in a letter dated June 7, 1994, the petitions have been corrected in compliance with the Rules of the Court.

Thank you for your assistance in this matter.

Very truly yours,

/s/Meredith Freedman

Meredith Freedman
Pro Se on behalf of Petitioners

Enclosures

cc: David E. Powers
Stephen R. Fogarty

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July 7, 1994

William K. Suter
Office of the Clerk
Supreme Court of the United States
Washington, DC 20543

Re: R.F. et al. v. Board of Education of the Borough of Park Ridge Docket No. A-005058-92T2

Dear Mr. Suter:

I am writing to confirm my conversation with the clerk's office this date regarding the above matter. I telephoned the clerk's office today to find out whether the Court had received the petitioners' corrected Petition for Certiorari. I was informed by Ruth Jones of the Clerk's office that the corrected Petition had been received, although she was not sure what date it was received. I informed Ms. Jones that this office did not receive copies of the corrected petition.

Pursuant to the advice of Ms. Jones, I contacted the petitioners to ask that a copy of the corrected petition be sent to this office. The petitioner, Meredith Freedman, stated to me that there were no extra copies to be sent to me.

Based on the above, I have been advised by Ruth Jones that my thirty (30) day time period to file my Brief in Opposition to a Petition for Certiorari begins to run today. Therefore, the brief will be filed on or before August 8, 1994.

If you should have any questions, of course, do not hesitate to contact us.

With kind regards, we are

Very truly yours,

FOGARTY & HARA

By: Ellen Marie Walsh
Ellen Marie Walsh

EMW:lr

cc: Mrs. Catherine Mozak
Superintendent of Schools
Ms. Lorraine Freedman
Mr. Thomas Hennessy

(3)

Supreme Court, U.S.
FILED
SEP 15 1994
OFFICE OF THE CLERK

No. 94-4

In the

Supreme Court of the United States

October Term, 1994

R.F. and L.H. et al.,

Petitioners,

vs.

BOARD OF EDUCATION
OF THE BOROUGH OF PARK RIDGE,
BERGEN COUNTY, et al.,

Respondents.

PETITION FOR A WRIT OF CERTIORARI
TO THE SUPERIOR COURT OF NEW JERSEY,
APPELLATE DIVISION

PETITIONERS' REPLY BRIEF

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BEST AVAILABLE COPY

23 pp

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ARGUMENT

POINT I

Respondents have misrepresented the facts of this case.

Respondents state in Point I of their argument that the Petitioners in this matter, Meredith Freedman and Thomas Hennessy, have no standing in this case. These are incorrect facts. Originally, the title of the petition included R.F. and L.H. and was signed by their parents, Meredith Freedman and Thomas Hennessy. The petitions were returned to Petitioners stating that the parents were required to include their names in the title of the case. The parents complied with these instructions and returned the petitions. After consulting with the clerk's office, however, the parents were advised that the petitions were incorrect and that R.F. and L.H. could only be represented by themselves. This was confirmed by a letter from the Petitioners to the clerk dated September 8, 1994. Pursuant to the directions of the clerk's office, Petitioners have changed the name of the case back to its original name and corrected the Reply Briefs.

Therefore, R.F. and L.H. and their parents are all parties to this case, all claim injuries in this case, and all have legal standing in this case.

Throughout their reply brief, Respondents have referred to Petitioners as having consumed "alcohol" or "alcoholic beverages." This is a misleading description. The Petitioners traveled to the prom on a private mini-bus with ten other students. At some point during this trip, paper cups were given out for a toast. Neither R.F. nor L.H. were interested in participating and declined to accept the cups. Sometime later, a champagne toast was made, and other students placed cups of champagne in Petitioners' hands. Rather than get involved in a lengthy discussion, both students reluctantly took one sip of champagne and returned the cups. Although it would have been infinitely better had they declined the champagne completely, the students, only 17 years old at the time, made an instantaneous

decision in a difficult situation. R.F. and L.H. did not "consume alcoholic beverages." They reluctantly took one sip of champagne.

Respondents also state that when R.F and L.H arrived at the prom, an odor of alcohol was detected by the principal. This is not a fact. When R.F. and L.H. arrived at the prom, the principal *alleges* he detected an odor of alcohol emanating from four of the boys in Petitioners' group. However, three of the five chaperones clearly indicated that there was no odor of alcohol whatsoever from these boys. When the parents arrived, they were completely in support of the principal. However, when they noticed that the students were not intoxicated and did not smell of alcohol, they challenged the principal and asked him why he singled out these students. Furthermore, not one chaperone, including the principal, ever mentioned a smell of alcohol concerning R.F. and L.H.

Respondents have misrepresented the facts of this case.

POINT II

All decisions in this case have been contradictory or in error and have disregarded state law.

In Point II of Respondents' Brief, they state that the regulations have been found to provide sufficient notice to R.F. and L.H. by the Commissioner of Education in New Jersey, the New Jersey State Board of Education, the New Jersey Appellate Division and the New Jersey Supreme Court because they prohibit the use of alcohol at all times, in all school buildings, on school property and at any activity sponsored by the school administrators.

This is incorrect since the decisions below have all been contradictory, in error or have disregarded state law. In the initial emergency decision by the Office of Administrative Law, the judge cited Substance Abuse Policy 5131.6 by stating that the policy prohibited the use of illegal substances at all times on school property and at all

school activities sponsored by the school officials. PA-23.[1] Since the Respondents had already conceded that the students were not in possession of alcohol at a school activity, the policy was not applicable to this situation and this decision was clearly in error.

In the emergency decision that same day in which the Deputy Commissioner denied the motion for emergent relief, he failed to cite any rule in either the Substance Abuse Policy, the prom regulations or state law which prohibits consumption of alcohol en route to the prom and must be considered to be in error. PA-21.

In the initial decision by the Office of Administrative law concerning the underlying petition, the court stated that a local board of education has the statutory authority to adopt policies and procedures governing the discipline of students involved in the use of substances at school functions. The court further stated that:

"The only requirement is that these policies and procedures be adopted and implemented in accordance with the rules and regulations promulgated by the the State Board. N.J.S.A. 18A:40A-11." PA-14. This finding is contradictory since N.J.S.A. 18A:40A-11 does not sanction disciplining students unless they are in possession of or under the influence of alcohol in school or at a school function.

In the decision concerning the underlying petition, the Commissioner of Education found that the board's action against R.F. and L.H. was in accord with its regulations, education policy and state law. PA-10. The board's action was, in fact, not in accord with its own Substance Abuse Policy, its prom regulations or with state statutes. Specifically, it was in violation of N.J.S.A. 18A:40A-10, N.J.S.A. 18A:40A-11 and N.J.A.C. 6:29-6.3 (2.).

In support of this decision, the Commissioner cited two cases of students involved with substance abuse: *G.L.H. v. Bd. of Ed. of*

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[1] "PA" denotes Petitioners' Appendix.

Elmwood Park, 1974, S.L.D. 611 and *A.F. v. Bd. of Ed. of Holmdel*, 1991 S.L.D. 914. However, neither of these situations bears any relationship to the instant case and do not support the Commissioner's decision. In *G.L.H.*, the student was found in possession of alcohol on school property and was guilty of vandalism. In *A.F.*, the student was intoxicated at her prom and passed out. While disciplining these students was in accord with state law, disciplining the Petitioners was in violation of the above state statutes and administrative code.

Furthermore, the Commissioner's decision failed to cite anything in Respondents' policies or in state law that sanctioned their disciplinary action and is in error.

The decision of the New Jersey State Board of Education is contradictory. While it agrees with the ALJ that the Board's policy was clearly communicated, the State Board stated that to reduce the possibility of misunderstanding in the future, "we urge the Board to review its written policy to determine if it can be phrased better." PA-7. It should be obvious from this decision that the New Jersey State Board of Education found Respondents' regulations unclear.

All of the written decisions concerning this case have cited rules that are not applicable to this situation, have been contradictory or have been in violation of state law. Furthermore, none of the above decisions have cited anything in the Park Ridge Substance Abuse Policy, prom regulations or state statutes which sanctions the disciplinary action of Respondents.

Lastly, Respondents state in Point I of their brief that "pursuant to the direction of the State Board, the prom regulations have been revised to specifically prohibit consuming alcohol while traveling to the Prom." RB-6.[2] Obviously the prom regulations were unclear if Respondents were directed to revise them.

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[2] "RB" denotes Respondents' Brief.

POINT III

In conflict with state, federal and Supreme Court cases, Respondents have denied petitioners their due process rights.

Respondents have conceded in Point II of their Brief in Opposition that a student precluded from attending his/her graduation exercises is at least entitled to the minimal due process requirements of notice of the charge, explanation of the evidence and an opportunity to present his/her story.

They further claim that because R.F. and L.H. were given a chance to be heard by the Superintendent and the Board of Education, they were not denied due process in violation of the Fourteenth Amendment.

However, based on other state, federal and Supreme Court decisions, the Respondents did not meet the basic due process requirements. As indicated by the *Joint Anti-Fascist Committee v. McGrath*, 341 U.S. 123 (1951), the accused are entitled to receive notice of the charges against them. While Respondents claim that R.F. and L.H. did in fact receive notice of the charges, they were charged twice—before and after their hearing before the Board—with two completely different charges. The first charge, consuming alcohol "prior to" arriving at the prom, did not state which rule was violated, but instead declared a general violation of the Substance Abuse Policy and the prom regulations. PRA-1.[3] This clearly conflicts with *Warren Country Bd. of Educ. v. Wilkinson*, 500 So.2d at 461 (1986) in which the Supreme Court of Mississippi found that a school's notice of the charges must state which rule was violated.

Apparently Respondents realized there was no Substance Abuse

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[3] "PRA" denotes Petitioners' Reply Appendix.

Policy or prom rule prohibiting consumption of alcohol prior to arriving at school or a school function and decided to change the charge to one they could interpret with more flexibility. The first charge was then changed to the second charge—that the students were in "unsatisfactory condition," a violation of the prom regulations. PRA-3. This charge was made after the Board hearing, when the students no longer had an opportunity for a hearing. This is in direct conflict with the *Joint Anti-Fascist Committee* case which holds that due process includes both notice and a hearing.

Respondents claim that the students were punished for consuming alcohol while traveling to the prom and that when they were later charged with being in "unsatisfactory condition," this was not a different charge but a "more specific" charge. Petitioners fail to see how these two charges are similar or that one is more specific than the other since any reference they have made to these charges has been from completely different points in the prom regulations. Both are separate and unique charges and as such are in conflict with the decision in *Labrosse v. St. Bernard Parish School Board,* 483 So.2d at 1257 (La. App. 4th Cir. 1986) in which the court found that changing the charges after the hearing violates the student's right to due notice of the nature and cause of the charges against him/her. The fact that the *Labrosse* case dealt with an expulsion while the instant case deals with the graduation ceremony does not give Respondents the right to arbitrarily change the charges after the hearing to fit their needs.

The only New Jersey case involving a student consuming alcohol before arriving at school is *C.R.R. v. Bd. of Ed. of Holmdel,* 1990, S.L.D. 877 (Comm. Ed. June 4, 1990). In this case, a student who admitted consuming alcohol before arriving at a baseball practice was suspended for five days and expelled from the baseball team. After the student appealed the school's decision, the Commissioner found that for purposes of the athletic rule, the discipline imposed was proper. However, concerning C.J.R.'s five day suspension, the Commissioner found that the petitioner had the right to a new hear-

ing concerning the school's failure to follow its testing policy and to seek expungement of any improper discipline from the student's school record. This is virtually the same circumstances as the instant case since R.F. and L.H. were not in possession of alcohol, were not tested for substance abuse and were not intoxicated. The Respondents were in violation of their own regulations since point nine of the prom regulations clearly requires that students suspected of being under the influence of alcohol be examined and tested immediately. Despite R.F.'s and L.H.'s repeated requests for testing, the principal refused, denying them their due process rights.

In *Clark County Bd. of Ed. v. Jones*, 625 S.W. 2d. 586 (Ky App. 1981), the court found that in disciplining students, administrators' actions are arbitrary if they do not consider the previous general conduct of the students involved; the academic standings of the students; the probability of a recurring violation and the alternative punishments or restrictions.

Respondents state that although the *Clark County* case deals with expulsion, while the instant case does not, the Petitioners were nevertheless given an opportunity to bring any factors they thought relevant to the board's attention at a board hearing. This is not accurate since board member Gretsas arrived late at the meeting, missed the testimony of three of the parents, most of the testimony of the Petitioners and proceeded to vote anyhow. This is in violation of students' Fourteenth Amendment due process rights to a fair and impartial hearing. Furthermore, Respondents admit in point 26 of their Answer to Petitioners' Complaint before the Commissioner of Education that they "did not ask questions, present evidence, present oral testimony or articulate any reasons in support of [the principal's] disciplinary action."

There is no evidence that Respondents considered R.F.'s and L.H.'s excellent academic records, their exemplary behavior, the probability of a recurring violation or alternative punishments. Their action is therefore in conflict with the *Clark County* case.

Petitioners also point out that Respondents stated that in the *Clark County* case, the court approved the high school regulation which prohibits using alcoholic beverages while in transit to school functions. This is erroneous information. The school regulations prohibit using alcoholic beverages while in transit to school, not school functions. See *Clark County*, 625 S.W. 2d at 588. Respondents have again misrepresented the facts of this case.

Based on the above, the action of Respondents is in conflict with *Warren County, supra, Labrosse, supra, Joint Anti-Fascist Committee, supra, Clark County, supra and C.R.R., supra.*

POINT IV

The discipline imposed is unreasonable, excessive and illogical; has failed to consider all mitigating factors and conflicts with state and federal cases.

The discipline imposed is unduly harsh and is illogical. There is nothing in the Park Ridge rules or regulations that is more harsh and unforgiving than the discipline imposed upon the Petitioners. Students who are in possession of marijuana or are under the influence of alcohol in school are not subject to denial of participation in the graduation ceremony.

Respondents claim in Point III of their Brief in Opposition that the discipline imposed upon Petitioners is similar to that imposed on football players. RB-18. They claim that since the prom is not an ongoing activity like football and band and since student consumption of alcohol is of serious concern to school administrators, it was reasonable to prevent R.F. and L.H from attending all year-end activities.

This is in contradiction of Respondents' Substance Abuse policy. (PRA-5) If the consumption of alcohol is, in fact, of serious concern to the school administrators, then students should also be prohibited

from consuming alcohol before arriving at school. Yet, this does not appear in the substance abuse policy, proving that prom attendees are unfairly treated.

Furthermore, even the Park Ridge football regulations at least give the players three strikes before they are out. Specifically, students who use alcohol during the season are suspended from play for one week, required to perform a service project and must receive counseling before returning to play. For a second violation, players are suspended from play for three weeks, required to perform service projects and counseled before returning. Subsequent violations result in removal from the team. PRA-7

Therefore, requiring a student who violates the prom regulations to miss the prom, the Baccalaureate, the senior breakfast and the graduation ceremony is illogical, unfair and excessive.

The punishment imposed on the Petitioners is in conflict with *Warren County, supra, Labrosse, supra, Ladson, supra and Clark County, supra.*

Respondents have been unable to cite one state or federal case where students have been denied participation in the graduation ceremony as a disciplinary measure. In fact, in the rare case dealing specifically with denial of participation, the court found that unless there was a reason to suppose that the student's presence at the graduation ceremony would cause a disruption, denial of participation was not proper. *Ladson v. Board of Ed., Union Free Sch. Dist. #9,* 323 N.Y.S.2d 545.

Denying a student participation in the graduation ceremony is unduly harsh and unforgiving. It causes irreparable harm and deprives the student and his or her family of a precious memory forever. Denying R.F. and L.H. participation in the graduation ceremony is an extraordinary action for unextraordinary behavior and represents a precedential decision by school administrators. This matter

presents a federal question of significant importance to every future graduate. Consideration by this Court would establish reasonable standards for the denial of participation in the graduation ceremony and eliminate the necessity for costly and unnecessary legal challenges.

POINT V

This case is the first of its kind in New Jersey, is a violation of New Jersey Statute, and should be remanded to the Supreme Court of New Jersey.

Every case cited by Respondents in support of their action is irrelevant to this case. They have failed to cite one case involving a student who was disciplined for consuming alcohol prior to arriving at school. There has never been any case in New Jersey where students were disciplined for consuming alcohol at home or prior to arriving at school or a school function. (Unless they were athletes or arrived intoxicated.)

N.J.S.A. 18A:40A-10 and N.J.S.A. 18A:40A-11 require that all schools provide a *clear* written policy for the disciplining of students in possession of or under the influence of alcohol in school or at a school function. There is no state law that sanctions disciplining students who consume alcohol away from school.

The action of Respondents represents the first of its kind in this state and sets a dangerous precedent. Therefore, concerning the legality of Respondents' action, this case should be remanded to the Supreme Court of New Jersey.

CONCLUSION

For all the reasons set forth above, Petitioners respectfully request that a Writ of Certiorari be granted, or in the alternative, that this matter be remanded to the Supreme Court of New Jersey.

Respectfully submitted,

Rory Freedman, *Pro Se*

Meredith Freedman, *Pro Se*

Richard Freedman, *Pro Se*

Lorraine Hennessy, *Pro Se*

Thomas Hennessy, *Pro Se*

Catherine Hennessy, *Pro Se*

PETITIONERS' REPLY APPENDIX

Park Ridge Public Schools
2 Park Avenue
Park Ridge, New Jersey 07656

Catherine Mozak
Superintendent of Schools
Telephone: (201) 391-6511

June 11, 1992

Mr. and Mrs. T. Hennessy
73 Louville Ave.
Park Ridge, New Jersey 07656

Re: Lorraine Hennessy - Prom Incident

Dear Mr. and Mrs. Hennessy:

This is to advise you that disciplinary action has been taken with regard to your daughter Lorraine, as a result of the incident which occurred at the Prom on June 5, 1992. Upon my detection of the odor of alcohol emanating from a group of students, I questioned the students individually as to whether they had consumed alcoholic beverages prior to attendance at the Prom. Lorraine indicated that she had, in fact, consumed alcohol, in violation of Board Policy No 5131.6 and the Park Ridge High School Prom/Snow-ball Regulations. Please be advised that in accordance with the foregoing Policy and Regulation, Lorraine is hereby prohibited from attending all end of the year sponsored activities, including the Baccalaureate Ceremony, the Senior Breakfast and Graduation Exercises.

Please continue to speak with Lorraine, as we will regarding the gravity of this incident. We will continue to provide support to her from our administrative and guidance personnel. Please contact us

us if we can be of assistance in helping you to support your child.

Sincerely,

/s/ Emil Binotto

Emil Binotto
Principal
cc: C. Mozak
J. McCaughey
A. DiFiore
Counselor

Park Ridge Board of Education
2 Park Avenue
Park Ridge, New Jersey 07656
Telephone (201) 573-6000

Neil Giovaniello
President
Catherine Mozak
Superintendent of Schools

Louise Ruhle
Vice President
Richard M. McManus
Board Secretary and Business Administrator

George Apfel
Kathleen Coleman
George Gretsas
Gerald Hoffman
James Violante

June 17, 1992

Mr. and Mrs. R. Freedman
8 Hall Court
Park Ridge, New Jersey 07656

Dear Mr. and Mrs. Freedman and Rory:

This is to advise you that following your presentation to the Board on June 15, 1992 and its deliberations, the Board took action to affirm the recommendations of principal Emil Binotto and Superintendent Catherine Mozak to impose the discipline required by Item 9 of the Prom/Snowball regulation on your daughter, Rory. While the Board is certainly sensitive to the disappointment which

you and your daughter are experiencing as a result of its decision, it believes that the reason why there have been so few alcohol and/or drug related incidents on prom night is because the regulations have been applied uniformly and without exception. Your daughter was aware of the regulations which prohibited her from consuming *any* alcohol before attending the prom. Once having done so, she was, by definition, in an "unsatisfactory condition." The penalty for members of the senior class is restriction from participating in all end of year school activities including graduation exercises. The regulations permit no exceptions.

For all of the above reasons, the penalty imposed upon your daughter, including restricting her from participating in all of end of year school-sponsored activities including graduation exercises, was affirmed by the Board of Education.

Very truly yours,

/s/ Catherine Mozak

Catherine Mozak

Acting Board Secretary

enc.

PARK RIDGE SUBSTANCE ABUSE POLICY 5131.6

* * * * * *

C. PREVENTION

It is recognized that prevention is preferable to correction of problems.

Therefore, each principal is requested to establish procedures in the operation and supervision of both curricular and co-curricular functions which will prevent misuse of illegal substances. These include but are not limited to the following:

1. Adequate warning to students and parents of the resulting disciplinary action in case of violations.

2. Appropriate supervision at all school sponsored activities.

3. Prohibition of use of substances by anyone (adults included) at any school function, in school facilities at any time, and on school property during school hours.

* * * * * *

F. PROCEDURES FOR REFERRAL OF A STUDENT SUSPECTED OF SUBSTANCE USE (NOT INCLUDING ANABOLIC STEROIDS)

* * * * * *

13. Sanctions for possession and use of illegal substances:

Suspension up to ten (10) days; conference with parents, student, principal, Child Study Team, as necessary; and medical examination as determined by the principal.

* * * * * *

H. INCIDENTS INVOLVING THE SALE, PURCHASE, TRANSFER, OR POSSESSION OF ILLEGAL SUBSTANCES ON SCHOOL PROPERTY OR AT SCHOOL FUNCTIONS

1. Regulations

a. The possession and the use of illegal substances is forbidden on school property at all times, at any school function, or for any person under school jurisdiction.

* * * * * *

J. PROCEDURES FOR REFERRAL OF A STUDENT SUSPECTED OF BEING UNDER THE INFLUENCE OF A CONTROLLED DANGEROUS SUBSTANCE DURING SCHOOL SPONSORED ACTIVITIES BEYOND SCHOOL HOURS

If any student is suspected of using or being under the influence of any chemical substance during any school sponsored activity, the principal or his designee shall immediately notify the parents. Arrangements will be made for an immediate examination of the pupil by a doctor following the procedure detailed in "F. 4" above.

Sanctions will be applied where appropriate which may include those specified in "H" above. For use of substances at school functions, in addition or in lieu of sanction in "H" above, students will be prohibited from attending other school-sponsored activities such as proms and graduation.

PARK RIDGE ATHLETIC CONTRACT

* * * * * *

Consequences for use of controlled or dangerous substances:

For the first violation, the student will not participate in games or practices for a minimum of one week. In addition, he/she will be assigned to a school-related service project. Also, counseling and/or substance evaluation must be implemented before the student returns to practice sessions.

For the second violation, the student will not participate in games or practices for a minimum of three weeks. He/she will be assigned to school-related service projects. Additional counseling and/or substance evaluations must be implemented before the student returns to practice sessions.

For subsequent violations, the student will be removed from the team and a mandatory drug/alcohol evaluation will occur.